

S P E E C H,

AGAINST

The SUSPENDING and DISPENSING

PREROGATIVE, &c.

IT IS BUT FORTY DAYS TYRANNY AT
THE OUTSIDE.

PER LUDWIG TERRA.

Populus Romanus beneficii et injuriae memor esse solet.

Nemo civis, qualis sit vir, potest latere.

*—Quendam, hominem nobilem, faciosum, novis rebus
studere, adversum quem—neque LEGES valerent.*

Neque modestia, neque modus contentionis erat.—

*Sed eos frequens Senatus judicavit contra REPUBLICAM et
salutem omnium dixisse.*

SALL.

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SPEECHES have been published, pretending to be the real speeches made in a certain place. This does not go to the publick under any such pretence. The speech now offered to the reader, was made in a private Political Society, which from common fame procures the best information they can of what passes in other places.

A S P E E C H, &c.

PERMIT me, late as it is, to express my thoughts upon one of the most momentous subjects, in my opinion, that I have ever heard agitated in ———. I hardly know what more important matter could occupy your ——— attention, short of a question touching the actual dissolution of government. Sure I am, if what we have this day heard strikes your ———, as it does me, it must have brought fresh to your remembrance the fatal ground upon which that unhappy question was decided, with a vengeance, when it was debated in th——e, near fourscore years ago.

We are, as it were, surprized into a debate upon the *dispensing power*, and what astonishes me still more, we are got, at least some of us, into a vindication and defence of it;——a thing I had long thought so odious in its very name, but so settled in the notions of it, and so exploded in theory as well as practice, that no body ever thought of it, but to hate it, and to thank God it was utterly exterminated out of the pure solar system of the English Government, and English Liberty.

One ——— has told us he rose in this debate not as a *Patron of Liberty*, in the *modern phrase*, as he was pleased to call it, but as a *Patron of Law*. Modern phrase did the ——— say? I hope it will never cease to be a modern phrase; though it is an ancient, and has in all countries been a glorious title. Our ancestors were Patrons of Liberty at the cost of their lives; but they secured our LIBERTY by protecting the LAW against a *dispensing power*, which they resisted unto blood. *Quid a majoribus defensum est aliud quam LIBERTAS: neu cui nisi LEGIBUS pareremus!* Shall we then be the *præclara proles*, *geniti ad ea, quæ majores virtute pepere-*

re, subvertunda? We are yet free, and "The freedom of men under Government is to have a standing rule to live by, common to every one of the society, and made by the Legislative Power created in it." So says Mr. Locke, *who is* appealed to as a great authority. What he says in these few words is equally in favour of LAW and LIBERTY. I shall be proud to shew myself the Patron of *both*.

—, The same — has been pleased to claim, if not the whole, yet the best knowledge of the Constitution on behalf of the profession which has raised his — to the h— st—ns he has enjoyed. But I have always looked upon lawyers, at the best, to be but the most skilful midwives to help forward the birth of the Wisdom of Great Statesmen, sound, enlightened, and enlarged Politicians, to the energy and sagacity of whose genius, in all ages, and in every country, the best models of Government have been most indebted: of this the appeal made to-day, as well as on a late *notable* occasion, to the speculations of Mr. Locke, that great Philosopher, Legislator, and Senator, (as we have been told he was) is a strong proof.

This also I will be bold to say from the history of England, that our liberties owe most to Great Noblemen who were not lawyers. Sure I am, lawyers have often appeared amongst us, to be the worst guardians of the Constitution, and too frequently the wickedest enemies to, and most treacherous betrayers of the Liberties of their country. Of this truth, the preamble of the bill of rights, which the — has himself appealed to in the debate, as his chief, tho', I think, much mistaken, and much misrepresented authority, will be a perpetual monument, in these words: "Whereas K. J. II. by the assistance of divers evil Counsellors, JUDGES, and *Ministers*, employed by him, did endeavour to subvert and extirpate the Protestant Religion, and the LAWS and LIBERTIES of this kingdom." Certain it is, that no arbitrary prince, when meditating the subversion of the Constitution,

situation, ever was at a loss for Lawyers and Judges to second his designs, in spite of their learning, and in spite of the religion of the oaths that bound them to support and maintain the Constitution. And *ship-money* and the *dispensing power* have, in former times, had the vile countenance, and, if it could be so called, the authority of the bench, and of the sages, or the *Fathers* of the Law (as Charles I. named his *ship-money* Judges) while a Hampden, and such-like Patriots, who were the greatest honour, and the greatest blessing of England in their day, stood forth the saviours of their country, by resisting the usurpations of the crown, supported by the perfidy of corrupt Judges.

Such a sort of monopoly as the — suggests in favour of the long robe favours too much of what a Lord Keeper (who made many excellent *prerogative-speeches* for Charles the First) said in the conclusion of the speech he delivered, after publishing that shameful opinion of the judges on *ship-money*. The words I allude to are these: "If any contrary opinion should yet remain among men, it must proceed from those who are sons of the Law. Of the latter, I will say, *Felices demum essent artes, si de illis solum judicarent artifices.*" So that *Prerogative Lawyer* was for keeping the judgement of the Constitution to the art and mystery of the law. Y—— will not, from the occasion, be fond of adopting the example.

If the — has now got so high an opinion of the advantages of the long robe, I remember when he had it not. But this is not the only proof this day has furnished from his — and from some others too, of the wonderful change in opinions, that difference of interests, as well as situation, brings with it. For I think the same — has likewise told us to-day, that we are undone by divisions, though I can recollect the time when his — regretted in th— h—e that we were ruined by an *intoxicated unanimity*, under an a——n of which one of his *new* friends constituted a most brilliant part. I congratulate the — on this change of mind

mind for the better, which is more than I can say of all the opinions his — has given to-day, though I believe they proceed also from a *new light*. I cannot however say, the — and — —'s opinions are *modern*. They are *old*, and what is more, they are *antiquated*. His — has but revived an old farce, not acted near these hundred years. It will therefore be fit, I think, to examine opinions that have slept so long, before they are *re-ferred*, or licensed, so as to pass current.

But — — it is necessary, for preventing mistakes, to premise, that I heartily concur with all your — who have spoke in the debate, in expressing my approbation of the measure immediately under consideration, *when taken*, — the embargo on wheat and wheat flour laid by order of Council *so late* as the 26th of September. The evil of an enhanced price of that grain, which had for so considerable a time before been prognosticated, and growing by a quick pace, was then come to so alarming a height, that it awakened even our a — —n from the pleasing dream of pecuniary emolument, and extravagant compensations, most liberally doled about to one another, beyond the example of any former time. It awakened them to the cries and risings of the poor, and at last made them take notice that there was such an imminent danger of famine, that it became indispensibly necessary to put a stop to the exportation: And by a long prorogation of Parliament, which themselves had so culpably advised, that there was no other way left of doing it, but by an interposition of the *Royal Power*. I choose to use that word, though *authority* is the word used in the S —, from the T —, because I materially distinguish between the two expressions, for reasons I shall afterwards give.

— —, On the other hand, I most warmly deplore and lament the calamity produced by the want and dearth of provisions, mentioned likewise in the s — —h, I mean that spirit of insurrection, riot, and disorder, that has gone forth, and rages in all corners of the kingdom, big with fire and sword, to afflict a country, already groaning

groaning under a weight and pressure of evils, greater than she can bear. It would ill become this place to palliate or excuse, on any account whatever, such dangerous tumults and riots, much less to incite and encourage them, by saying as I have once heard it said within these walls, by one sworn to execute the laws, that the subjects cruelly harrassed by burthens and other grievances, imposed upon them by the Legislature, are made desperate. This daring and lawless expression, I confess, related only to the justification of the *American subject* in wanton rebellion. God forbid that I should adopt the detestable language, even in favour of the *English subject*, taxed till the power of taxing can no further go, famished, and starving. It must, however, grieve one to see the nerves of government so totally relaxed, and its proper energy and vigour almost wholly lost. The truth of the matter, and the root of the evil is, we have had no government for some years, or, which is much the same thing, we have had the *form* of it only, without any reality, energy, or spirit, descending ever from bad to worse.

Tota discors machina divulsi turbat fœdera mundi.

And the — — in the bl—e ri—— has too good reason to put us in mind of what he told your — last year, that you would import rebellion from America. Would to God he had not been so true a prophet! The indulgence shewn to *Americans* is not, I fear! altogether free of the blood that must be sacrificed, in *England*, at the altars of justice, to restore and preserve peace and good order, maintain authority and secure property. Nor can I acquit the blunders of a——n in this very corn business, of that charge. I am afraid, the unseasonable, and extraordinary long prorogation of Parliament, which excluded the prospect of relief from famine, by a *legal* prohibition of the exportation, had no small share in producing the riots and risings: And by a shameful blunder in the Proclamation against forestalling, misreciting the laws it promulgates, a pretence was given for the riotous people to seize the grain for their own use,
under

under a mistaken notion that the *grain* itself was forfeited, as the Proclamation declares it to be, instead of a forfeiture of the *value* of it, which is what the misrecited statute enacts.

— I said I approved of the embargo as necessary, *when* laid on; but I do not approve, on the contrary, I complain of the preceding conduct of ad—n, by which they brought themselves into that dilemma, which necessitated them to advise his M— to that measure, by what is called the Royal Authority. And as to the principles I have heard laid down to day, and the doctrine that has been advanced in justification of the legality of the embargo; so far am I from approving of them, or acquiescing in them, that I cannot even hear them with patience. I declare they make all the Whig-blood in me boil; for, to use an expression that has, I think, been miserably misapplied on the other side, these doctrines, if adopted, lay the ax to the root of the constitution. They can tend to nothing but an utter subversion of the power of Parliament, and of the most fundamental and essential Rights and Liberties of the subject. Upon my word, if I did not know I was awake, I should be apt to think I had been in a dream, and that some fairy midnight scene had carried my imagination back an hundred and thirty or forty years, in an illusory audience of some of the speeches of a James, or Charles, or their Lord Chancellors and Lord Keepers; for with no other standard of the prerogative, that I know of, will such notions square, and *these* they will fit,

— I shall hereafter endeavour to point out that assemblage of circumstances on which I found the complaint of blunder, inattention, and neglect in the a—n: But your — will allow me, in the first place, to consider the general *doctrine* that has been drawn into the debate, as by much the most important matter, and what indeed principally called me up: I say has been *drawn* into the debate, for sure I am it could never have come from the measure in question, if it had been allowed to rest upon its true bottom, with a claim to such a sanction as could be given it by *Law*:—
which

which sanction, by the way, I fancy your — will find necessary, notwithstanding all that has been said in support of the embargo as a legal exercise of prerogative.

— The question debated is, whether the embargo on corn, the largest freedom of exportation of which is permitted by many Acts of Parliament, and encouraged by a statute bounty, is a prohibition according to law; a legal act of government, within the constitutional bounds of the prerogative of the crown; or is only a mere *act of power*, induced by an urgent necessity in the state, exceeding the true limits of the royal prerogative, but that ought, for its beneficial tendency and effect, to be approved, and must be confirmed by the sanction of law, to give it legal force, and valid operation.

This question comes to a general point, and it has been brought to that in the debate. A general proposition must be maintained, and the general proposition has been maintained, that of *any*, and if of any, of *every* act of parliament, the King, with the advice of the Privy Council, may *suspend* the execution and effect, whenever his Majesty, so advised, judges it necessary for the immediate safety of the people.

I limit it so to give the proposition fair play. I shall likewise, to be as candid as I can, add, because it has been added, *during the recess of parliament*: and if — please, they shall have the other words too, *when parliament cannot be conveniently assembled*. Such precisely is the proposition that has been maintained in this debate. For God's sake! — is this the doctrine of the Constitution? Is this doctrine that Englishmen will swallow? Can it go down! I do not say with your —, will it with the most unread or unlearned in the Constitution? If this is Constitutional doctrine, I make bold to pronounce the revolution, —, the GLORIOUS REVOLUTION! (as I have been taught to call, and to think it,) nothing but a successful rebellion, the most lawless and wicked invasion of the rights of the Crown, — and the BILL OF RIGHTS, that illustrious monument of English liberty, the Palladium and Bulwark of the Constitution, the most false and scandalous libel that ever was published,

lished; the most infamous imposition, both on Prince and people, ever invented. James the second neither abdicated, nor forfeited; he was robbed of his crown, His Majesty is an usurper, and his Royal Ancestors, of blessed memory, even our great and glorious deliverer himself, have all been usurpers; the act of settlement is a nullity, and your —— are a generation of Rebels, whose fathers revolted; many of you are not ——s of the ——m. Pardon me —— if I am warm, I cannot help it.

The —— at the head of the C—B— who spoke early in this debate, is called a Whig, —— a zealous Whig he calls himself; but he has defended the legality of the embargo, by maintaining the very proposition I have rehearsed. I say he has defended the *legality*, for we are not now debating the *necessity*, and the argument goes to exclude the method pointed at in the —— moved, of *legalizing* the measure, and validating it, by a bill of indemnity.

The —— has told us, he would prove his point from no less authorities than the Bill of Rights, Acts of Parliament, and the usage of the Privy-Council.—Very respectable authorities indeed! who could desire better? I shall consider them all, as far as I am able to follow the —— on memory; and I was as attentive as possible.

Now, ——, to the proposition; and I would first speak a word to the last part of it,—the *recess of Parliament*. This is either an old, or a new distinction. If it is an old one, the —— should shew us where it is to be found; if it is a new one, he should tell us what authority, warranted by the law of the land, has made it. But the truth is, it is the distinction of the day, and I suspect it will never grow older; it is an alleviation of the dispensing power, to sweeten it to your ——, because too nauseous in the full stinking potion.

—— There was no such distinction in the days, when the *Law-making*, and the *Law-breaking Prerogative* walked forth at noon-tide. The princes that were then endeavouring to establish the *dispensing* and *suspending* power, in their best moods, and when they were speak-
ing

ing soft words to Parliament, told them, that though they *condescended* to call them together, it was not because they could not do without them; and that if Parliament refused what they deigned to ask, they would only be forced to use the other powers for attaining it, which God had given them. The concomitant, and the fatal principal of those days was, that the Rights of Parliament were so many concessions of the Crown, resumable at pleasure, and the calling them but a gracious compliment from the prince: and so the maxim of the *idolaters* of prerogative, as then understood, that is of *absolute and arbitrary Power*, was a *Deo Rex, a Rege Lex*.

— —, I cannot conceive the ground of this distinction as to the recess of Parliament. By the Constitution as now modelled, Parliament must always be in being, ready to be called, so much so, that even an expired Parliament revives when necessary to be assembled, and another is not chosen. With regard to acts of Parliament, I know of no days, either *fasti* or *festi*, in which they sleep. They are not like jurisdictions that may be evaded by going into a sanctuary. They are of equal force, while in being, at all times, in all places, and over all persons; or, as Mr. Locke says, "Laws, though made in a short time, have a *constant* and lasting force." Acts of the executive power are incident, temporary, and instantaneous; but Acts of Parliament are permanent, made as the general rule by which the subject is to live, and be governed.

Unless therefore it can be said that the moment Parliament breaks up, the King stands in its place, and that the continuance of Acts is consigned into his hands; he cannot of right *suspend*, any more than he can *make* laws, both requiring the same power. *The Law is above the King*; and the Crown, as well as the subject, is bound by it, as much during the recess, as in the sessions of Parliament; because no point of time, nor emergent circumstance, can alter the Constitution, or create a right not antecedently inherent. These only draw forth into action the power that before existed, but was quiescent. There is no such prerogative in any hour or

moment of time, as vests the semblance of a legislative power in the Crown.

— — If we next examine the foundation of *necessity*, it will appear to be equally destitute of authority, as the other distinction. But it would be to tire your — patience unreasonably, because there is no use in it, to enter into this argument at large. For who has ever read the arguments on *ship-money*, and the *dispensing power* in former and bad reigns, that does not know, that a *supposed* necessity was the plea to justify the acts complained of? And the answer is ready in the mouth of every one, that if the crown is the judge of that necessity, the power is unlimited; because the discretion of the prince, and his council, may apply it to any instance whatever: and so discretion degenerates into despotism. Therefore the wisdom of the constitution has excluded every discretion in the crown over positive statute, and emancipated acts of parliament from the Royal Prerogative, leaving the power of *suspension* which is but another word for a temporary repeal, to reside where the legislative is lodged, to which only it can belong; that is in King, Lords and Commons, who together constitute the only *supreme sovereign authority* of this government. Nor did Parliament ever allow of the *dispensing power*, or any thing of the kind, because it was exercised under the specious pretence of *the safety of the nation being concerned, and the whole kingdom in danger*, which was the usual jargon, and, if true, implied the most urgent necessity.

The — and — on the cross bench, who like a true friend of Liberty, has given us so excellent a definition of the Constitution, as *a government by Law*, (which I must do his — the justice to acknowledge has often come from his lips in this h—e) has very accurately stated the extent of the crown's discretion, in matters within the legal prerogative. H — — has truly said, that in *these* the crown, which is entrusted with the power, and has the right to act, must be judge of the necessity and season of acting, subject always to the controul of that Constitutional advice, by which the crown must act in all cases. But these acts, as his — justly observed, are legal,

legal, not because they are necessary and proper, but because they flow from the proper power; and they are legal and valid, though wrong in themselves, till corrected; as a legal power may be improperly exercised? for which the advisers are responsible. But I heartily agree with his — that the constitution has entrusted the crown with no power to *suspend* any act of Parliament, under any circumstances whatever; and with his — I also declare I never shall, nor can, consent to any such power, being intrusted *with the Crown*.

For my own part — — it is difficult for me to form an idea of the *necessity*, in any case, of *suspending* an act of Parliament by *Royal Authority*; as the Parliament may always be assembled in time to prevent an irremediable evil from any statute. Sword and famine seem to be the most alarming evils; but neither of these can possibly ever catch the nation in a case of unavoidable necessity, without culpable neglect. Invasion is not the work of an instant, and government must be totally asleep, the ministers, both at home and abroad, dozing strangely, if there is not intelligence in time to assemble parliament. Scarcity, it is impossible, can ever come at a moment's notice, so as to make famine stare us in the face; and even in the present case it is apparent, that the necessity which, *at the instant*, justified the embargo, was owing to an inattention that loads the authors of it, and reduces it to the case of *Esaú's* necessity, who sold his birthright for a mess of pottage, because he had not been prudent enough to provide in time for satisfying his hunger at a cheaper rate. The Marquis of Halifax has some words so applicable to this subject, that I cannot help quoting them. "By the advantage of our situation, (says he) there can hardly any such sudden disease come upon us, but the King may have time enough left to consult with his physicians in Parliament. Pretences indeed may be made, but a real necessity, so pressing that no delay is to be admitted, is hardly to be imagined; and it will be neither easy to give an instance of any such thing for the time past,

or

or reasonable to presume it will ever happen for the time to come. But if that strange thing should fall out, our constitution is not so strait laced as to let a nation die or be stifled, rather than it should be helped by any but the proper officers. The cases themselves will bring the remedies along with them." This doctrine I can subscribe to in all its parts. But still, I say, that if a clear case of undeniable necessity could be figured, the *legality* of the act done under that force would just stand where it did, upon the general principles of the Constitution, and not the particular exigency of the instance, and the justification be effected by an *ex post facto* law, has now pointed at. For I apprehend it to be bad politicks, and I should imagine it worse law, that any special case can ever derogate from a general fixed rule, such as a fundamental law of the Constitution.

Let us therefore — — take what road we will, still we come back to the general question, Has or has not the crown a right to *suspend* an act of Parliament, in any case, or on any pretence whatever? And let the question be tried by the — — s own authorities.

I begin with the lowest and last named, — the usage of the Privy Council. The — — produced no instances of this usage of the Privy Council, in prohibiting the exportation of corn. The present is the first we have been informed of. It is clear the Queen's ministers would not venture upon it in 1709. On the contrary, when the Queen was advised to call Parliament on purpose to make provision for preventing famine, it is remarkable that she tells them in the Speech from the throne, that she had done all that she could *by law*; referring to the proclamations issued against forestalling, &c. The Queen was not advised even to use the device of laying on a general embargo, thereby to prevent the exportation of corn; tho' being in time of war, the Crown had an undoubted right to lay an embargo. As that would have been using the war-power of embargoes indirectly for another end than a war-purpose, such an evasion of the law was not judged wise or fit. In the same manner the example of the Queen's reign

was

was followed in 1756; which was also a time of war. Lord Hardwick would not then advise an embargo: We see at all other times of the like exigency, from an apprehension of scarcity, parliament has been constantly resorted to: And from the bare recital of the several acts of parliament on the subject, as well the laws permitting the exportation, as those temporary acts prohibiting it in times of scarcity, it is plain that there is not, perhaps, another instance of a thing so well guarded against the fangs of prerogative in practice as well as by statute.

— — The only example of this usage mentioned by the — — was the prohibition of the exportation of gun-powder, which is frequently laid on by the King and Council. But to that there is a very short answer, *viz.* that there is an express provision in one of the Acts that have been alluded to, the 12th of Charles the second, allowing the King by Proclamation to prohibit the exportation of gun-powder, though by the same act the exportation of it is permitted; which is an authority in point against, instead of being one for the — —'s argument. And this express statute provision, as to gun-powder, to avoid doubts upon prerogative powers, even in such a case as that of warlike stores, proves how jealous Parliament is of a *dispensing power*, and how scrupulous Government has been to rest any thing upon constructive arguments of *right*, or cases of *necessity*, to justify the Crown's interfering with acts of Parliament.

In regard to the authority of acts of Parliament, the only one mentioned by the — —, I think, was that converting the declaration of rights into a bill, and making it a statute. We may therefore take both together, the — —'s argument being founded on a comparison of the declaration with the bill or statute, and what the — — is pleased to call a difference between them, as if the bill limited and restrained the words in the declaration,

The — — read from his *own copy* the first article of the declaration of rights, presented to the Prince and Princess

Princes of Orange, and *verbatim* recited in the bill, or act of parliament. The words of the article are, "whereas King James," &c. did so and so, "by assuming and exercising a power of *dispensing* with, and *suspending* laws, and the execution of laws without consent of parliament." And says the — — this to be sure is general, and would leave no latitude, but this is only the *claim* as put in by the subject, and therefore when parliament came to enact upon the article, they restrained it, knowing that it was impossible but there might be a necessity for the Crown's *suspending* some particular acts of parliament, *during the recess of parliament*. I appeal to your — — if this was not the — —s reasoning precisely, and his very words, I marked them well, for I own they surprised me. — — And the — — next reads to your — — the second article of the bill, in the enacting part, which stands thus (viz. declared by parliament) "that the pretended power of dispensing with laws, or the execution of laws by regal authority, *as it has been assumed and exercised of late*, is illegal." Hence says the — — it is clear that parliament, when they came to make the statute, would not deny every degree or kind of a *dispensing* power in the Crown, but only *as exercised of late*, that is by King James. I confess — — the reasoning astonished me, and I think it could not convince y — — or any man living, if the thing rested on the very words the — — has read, to prove his distinction between the declaration and the enacting bill.

— — The history of these words *as exercised of late* is well known. They were an amendment made by the Lords to the bill to save some old charters and grants, with *non-obstante's*: And to secure against all dispensations whatever with statutes in time to come, there is a clause in the end of the act, declaring that no dispensation by *non-obstante* of, or to any statute, should be thereafter allowed, except a dispensation be allowed in such statute. But what was the *dispensing* power exercised *of late* by King James? It was only dispensing

dispensing with *penal* laws; that is, a remitting or *dispensing* with penalties inflicted by act of parliament in certain cases: And even that sort of dispensation, or exercise of the *dispensing* power by King James, is condemned by the bill of rights as illegal.

These words therefore upon which the — — has laid so much stress, furnish one particular remark, but it is most unfavourable to the purpose for which he has quoted them. Your — will have prevented me in it, by recollecting what I had just now mentioned. For tho' King James undertook to shew, by the means of his corrupt judges, *that a power in the King to dispense with law was law*, the only acts of parliament upon which he made his essay of the *dispensing* and *suspending* power were the *penal* statutes against non-conformity; from which, for the sake of the Papists, he gave a general exemption, by the lump, to all his subjects. He took that method, because parliament had remonstrated against his *dispensing* with the Test-Act, in favour of the Roman Catholick officers he employed: And the language which the parliament held in that remonstrance deserves our most particular notice. They told the King "that the consequences of *dispensing* with "that law, *without an act of parliament* were of the "greatest concern to the *rights of the subject*, and to "all the laws." King James suspended no acts of parliament besides these *penal* laws; and to *penal* laws only did the judges he corrupted extend that shameful opinion for the *dispensing* power, which they gave judicially in a particular case; — an opinion grounded upon such notable reasons as these, "that the laws of England were the King's laws, and therefore it was an incident, inseparable prerogative of the Kings of England, as of all other Sovereign Princes, to *dispense* with all *penal* laws; and that it was not a trust invested in, or granted to the King, but the ancient remains of the Sovereign power of the Kings of England, which never had been taken from them, nor could be." Yet for dispensing with and *suspending* these *penal* laws only, laws that in so far as they affected Protestant Dissenters were truly a grievance, and therefore were re-

pealed after the revolution, did the estates of this kingdom *dethrone* King James: And it was declared in the bill of Rights, that the pretended power of *dispensing* with laws, or the execution of laws by regal authority, as it had been *so* assumed and exercised *of late* was illegal. What then must we think, in these times, of such a construction, as is now held out of the bill of rights, which attempts to invalidate and pervert the Great Charter of the Revolution, by setting up, as a Prerogative of the Crown, a right, in *all cases of necessity*, to *dispense* with *all* laws, touching our Liberty, and our Property?—a right to which in these instances K. James the II^d, with his most corrupt judges, never dared aspire.

But —, my wonder is not confined to the — — construction or interpretation of these words. For I am utterly at a loss to understand how the — — got at the *second* article of the enacting bill, without reading the *first*; or how he took the second article *alone* of the bill for the *whole* echo of the first article of the declaration or claim of rights recited in it, as the preamble of the enacting part, when the half of the answer to the first article of the *Claim* or declaration is in the first article of the *Bill*. But however the — — may have past over that first article of the enacting part, I dare say it is not out of any of your — — memory. Hear the words of it. (Art. 1. of the enacting bill) “*DECLARE* that the pretended power of *suspending* of laws, or the execution of laws, by *regal authority*, “*without consent of parliament, is illegal*.” the very precise letters and words of the first article of the declaration, or claim of rights, only leaving out the word *dispensing*, because that is made an article by itself in the second of the enacting bill. After reading this first article of the enacting part of the bill, I certainly need not ask your — —, or the — — himself, where the limitation is, in *that article*, on which his — — has founded his whole argument? Nor will the — — deny that the first article is as much a part of the Act of Parliament as the second. Most undoubtedly there is not the least difference between the *Bill* and

and the *Claim* in this *general*, unlimited and unrestrained position, that the *pretended* power of *suspending* of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal, every word of which is emphatical. And so parliament in the same bill enacts, " that all and singular the Rights " and Liberties *asserted* and *claimed* in the said *declaration*, are the true, *ANTIENT*, and *indubitable* RIGHTS " and LIBERTIES of the people of this kingdom, and " shall be so esteemed, allowed, adjudged, deemed, " and taken to be; and that all and every the particulars aforesaid shall be firmly and strictly holden " and observed, as they are expressed in the said *declaration*; and all officers and *ministers* whatsoever shall " serve their majesties and their successors according " to the same."

The — — says it is a narrow and illiberal idea that the Crown has not, or ought not to have, a power, for the publick good, to *suspend* an act of parliament. I do not know what the — —s notions of liberality are, or how liberal his own ideas may be. Extraordinary liberality *received*, may beget extravagant *returns*. Profusion in giving may produce vast compliance in yielding; and to whom much is given, of them the more will be required. A great authority says, that gifts blind even the wise. For my part I confess, I have no opinion of that liberality of which the Constitution is the subject. Of the Constitution no man can be too sparing or abstemious. She has cost much, and she is worth all that she has cost; and without it, every thing else will be of little value. I hope nothing shall ever tempt Y— — to be liberal so much at the expence of your fellow subjects. Slices of the Constitution, are the last thing I will give away, nor shall I consent to maim it, to gratify any man, or to justify any measure.

As to the — —s question, what would be the distress on many occasions, if there was in no case a power in the Crown, to *suspend* an act of parliament? After the words of the *Bill*, that is the *Statute of Rights*;

which I have quoted, I will give no other answer than this, that they exclude totally, absolutely, and in the most general terms possible, any such power: And I am yet to learn what posterior statute has repealed one article of the Bill of Rights, or vested in the Crown, or the Privy Council such a sort of *Chancery* powers, to *suspend* laws and acts of Parliament, on suggestions of equity, or expediency, for the safety or relief of the subject: Nor do I see that such an alteration would be an amendment of the Constitution, I think it would destroy it, to the very foundation.

—— We have had a philosophical argument upon *Prerogative*, to prove that the prohibition in question was a *legal* exercise of *legal Prerogative*: And Mr. Locke's authority has been quoted, a page or two of whose chapter on *Prerogative* the —— in my eye has read.

—— Nobody has greater respect for Mr. Locke's writings than I have; yet if I found any thing in them that did not square with the settled fundamentals of the Constitution, I should not be moved by him. It is highly improper, I am afraid, to enter here into a general discussion of Mr. Locke's ideas, and nothing but the deference, I will add the justice, due to so venerable a name, would have made me go into this. But I believe Mr. Locke and I do not at all differ, and I think he is misunderstood, when brought as an authority on the other side. It is not doing him justice; for surely there was not a man in England a greater enemy to the *dispensing* power than himself.

—— *Prerogative*, is a word that has been the occasion of great wranglings, and certainly the princes of the house of Stuart understood by it arbitrary power, or something so very near it as not to be distinguishable. I have a very simple notion of it, and it is this, that *Prerogative* is that share of the government which, by the Constitution is vested in the King alone. Lord Coke, after giving the etymology of the word as denominated from the most excellent part, because the King must be first asked before any law is made, says, "the *Prerogative* comprehends all the powers, pre-eminences,

eminences and privileges which the Law giveth to the Crown. It is no distinct or separate inheritance in the Crown opposed to the interest of his people. It is a trust *ad communem totius populi salutem*, just as much as the powers of Parliament are. Now I can never conceive the prerogative to include a power of any sort to *suspend* or *dispense* with laws, for a reason so plain that it cannot be overlooked unless because it is plain; and that is, that the great branch of the prerogative is the *executive* power of Government, the duty of which is to see to the execution of the laws, which can never be done by *dispensing* with or *suspending* them.

— — When Mr. Locke speaks of the prerogative as *acting sometimes even against law, or of the laws themselves yielding to the executive*, it is far from his meaning that the prerogative or executive can *dispense* with or *suspend* laws. His example makes it clear, *viz.* that of pardoning offenders where the law condemns, which is certainly undoubted prerogative. There the law yields, — not in its force or subsistence, but only in its consequences, and in a particular instance: And though the King can pardon, he cannot before hand, even in a particular instance, *dispense* with the law. The expression of acting *against law*, is perhaps not well chosen, but it is evident Mr. Locke intended to express no more than this, that the Crown can by pardon (for instance) prevent that execution which the law would effect. As for the other instance mentioned by Mr. Locke of the law *yielding*, *viz.* pulling down a house to stop a fire, it is a clear inaccuracy; for that has nothing in the world to do with prerogative, or even with magistracy, no more than the throwing goods overboard to keep a ship from sinking. It is an instantaneous act of self-defence, to authorize which no man waits for, nor needs seek the order of a magistrate. The *fact* of danger which is *visible*, justifies it *in law*, just as the danger of a ship justifies *in law* the throwing goods overboard: and both acts are *legal*, and allowed by all the laws in the world. No body ever heard or read of a proclamation or edict from the sovereign to pull down a house in the midst of
a con-

a conflagration. So that if Mr. Locke's whole definition of Prerogative is taken together and fairly expounded by what he himself says, it will be found he perfectly agrees with what other sound Constitutionallists have advanced, that "Prerogative is a power in the person of the Sovereign, to command or act in matters not repugnant to the law, or for which the law has not provided, and certain acts of grace and favour, which the King might exercise with regard to some particular persons, provided these acts were not very prejudicial to the rest of the nation." Let Mr. Locke be but allowed to speak in his own words, and no error can be drawn from them. His reasoning in support of what he calls the law *yielding to prerogative* or the *executive* is this, "Since many accidents may happen, where in a strict and rigid *observation* (he should have said *execution*) of the laws may do harm, and a man may come sometimes within the reach of the law, which makes no distinction of persons, by an action that may deserve reward and pardon, 'tis fit the ruler should have a power in many cases to mitigate the severity of the law, and pardon some offenders."—And in the other places alluded to, where he speaks of prerogative *acting against law*, he reasons thus, "For since in some governments the law making power is not always in being, and is usually too numerous, and too slow for the dispatch requisite to execution; and because it is also impossible to foresee, and so by laws to provide for all accidents and necessities that may concern the public, or to make such laws as will do no harm, if they are executed with inflexible rigour on all occasions, and upon all persons that may come in their way, therefore there is a latitude left to the executive power, to do many things by choice, which the laws do not prescribe." Mark the last words! *which the law does not prescribe*. He does not say of doing things to *make laws of no force*. Nor in any one place of the book does he speak of prerogative as having a power to *suspend* any law. On the contrary, he largely handles the power of positive laws over the prerogative itself, to declare

declare limitations of it; and shews the absurdity of calling such limitations encroachments upon the prerogative: And he is very clear and expresses "that the legislature is the supreme power of the commonwealth, " and that *no edict of any body else, in what form soever conceived, or by what power soever backed, can have the force and obligation of a law, which has not its sanction from that legislature which the public has chosen and appointed, and that no obedience is due but ultimately to the supreme authority, which is the legislature.*"

Any author may be misunderstood by taking detached pieces of his writings, and that only can render Mr. Locke's sense of this matter dark or obscure; though I do not think he is always nicely correct in his expression.

For one instance, he says, in one place, that "the supreme power cannot take from any man any part of his property without his consent, because the end of government is to secure property." Yet would not any man be justly laughed at to produce this sentence from Mr. Locke, to prove that parliament could not divest the owners of the property of the houses which the bank has thrown down in Threadneedle-street, upon giving them a compensation. Mr. Locke new better than to doubt it; though that single sentence, if it stood by itself, might import a contrary opinion.

——A great deal has been said on this occasion by the —— who has quoted Mr. Locke, upon a few other words of that great author, where he says, that "if there comes to be a question between the executive power and the people, about a thing claimed as a prerogative, the *tendency of the exercise* of such a prerogative to the good or hurt of the people will easily decide that question." And the argument drawn from these words is to shew that the *tendency* of the embargo in question, to the *good*, and not to the *hurt* of the people, must decide for the legality of the measure, as an exercise of legal prerogative. But I must say there never was, in my poor apprehension, an argument founded

founded in a greater mistake, or an author more unreasonably cited.

—— Mr. Locke is not here speaking of the tendency of a single act done in exercise of a right of prerogative, as a rule to decide the legality of that particular act: he speaks, (and his words are plain) of the tendency, that is, the *general* tendency of the exercise of a power or *thing claimed as a prerogative*, as a rule by which the question may be decided, whether that power or thing claimed as a prerogative be really a legal prerogative, or only a usurpation. And most undoubtedly it may be a safe rule of decision. It is upon that very rule that I, and I trust every Englishman in his senses does, and for ever will decide, that a *suspending* power is not, *cannot* be a legal prerogative, in any circumstances, or under any pretence whatsoever, because the tendency of the exercise of such a prerogative is destructive to the Constitution. I say *the tendency of the exercise*: for it tends to render acts of parliament uncertain, and to bring positive law under the discretion, that is the pleasure of the Crown, and consequently to set the whole Rights and Liberties of the subject afloat, so that no man can for a moment be sure of the law, though it is his inheritance and *birth-right*. Then indeed it would be *vis mensura juris*.

Far therefore, ——, am I from differing with Mr. Locke, in what he says in the words quoted. I find myself at full liberty to express my approbation of his reasoning. I adopt his rule of decision of that great question, whether a thing claimed as a prerogative, be, or ought to be one. And I also heartily concur with Mr. Locke's sentiments in the only other quotation that has been read from him, "that when that great
" question does arise, (and it must be the greatest of
" misfortunes when it does) between an executive and
" a legislative power, constituted as ours are, there is
" no judge on earth to decide it; and therefore the
" only remedy is the appeal to heaven, that is, to the
" sword." On that principle do I approve and justify the conduct of those great and brave men, who main-
tained

tained our Liberties at the expence of their lives. They first contended for them, in Parliament, by force of reason, and particularly against the *dispensing power* of the Crown; and when the obstinacy of unhappy princes, enslaved with the notions of arbitrary power, which they called Prerogative, left no other option but to submit to the usurpation of the Crown, or to fight, they drew their swords, and Heaven, to which they appealed, propitious to English Liberty, justified their cause, and crowned it with success. In that extremity it was their right, their undoubted right, upon the doctrine of legal resistance, which is incorporated in this Constitution, to take the field against the princes who were the enemies of their people, the oppressors of their liberties. For as Mr. Locke truly says, in the forcible expressions that have been read by the — —, “ The people have
 “ by a law antecedent, and paramount to all positive
 “ laws of men, reserved that ultimate determination to
 “ themselves, which belongs to all mankind, when
 “ there lies no appeal on earth, *viz.* to make their ap-
 “ peal to heaven: and this judgment they cannot part
 “ with.” That, (to use the Marquis of Halifax’s words, a little, and but a very little differently applied)
 “ is the hidden power in this Constitution, which would
 “ be lost if it was defined; a certain mystery, by virtue
 “ of which a nation may, at some critical times, be
 “ (as ours has been) secured from ruin: but then it
 “ must be kept as a mystery; it is rendered useless,
 “ when touched by unskilful hands; and no people ever
 “ had, or deserved to have that power, which was so
 “ unwary as to anticipate their claim to it.”

— —, I think I might with great safety to the question before us, leave the authority of Mr. Locke, without any apprehension of the least impression from it. But as the doctrine of *tendency* has been brought on the carpet, I cannot dismiss it without a few words more; because I think it is of importance that it should be stated upon its true grounds; and I shall endeavour to do it very shortly.

I admit, as in this very case before us, (*the necessity*
 D *being*

being allowed) that a power which is not a legal prerogative, may be exercised for the good of the people : and so I will allow too, that the most legal prerogative that exists may be exercised to the hurt of the people. But as the hurtful exercise of a legal prerogative, in a particular instance, will not make the prerogative so hurtfully exercised, cease to be a legal prerogative, or prove that the general tendency of such a prerogative is to the hurt of the people, and therefore that it ought not to be a prerogative ; so neither will a beneficial exercise, in a particular instance, of an illegal or usurped Prerogative, change its nature and general tendency, so as to decide that it is or ought to be a legal prerogative.

— — I will explain myself, though I hardly think it necessary, by examples. It is the undoubted prerogative of the Crown, to declare war, make peace, and treaties, to create peers, and to pardon offenders. And the general tendency of the exercise of all these prerogatives is for the good, and not for the hurt of the people. The constitution has therefore vested these powers in the Crown, and they are legal prerogative. But who will deny that any one of these prerogatives may be improperly and hurtfully exercised ? If they are, the advisers of the Crown are responsible, though the power exercised is legal, and the acts valid. As the — and — — on the cross bench truly said, when the King makes war, it is war to all its consequences, however improperly the Crown may have been advised in taking the measure ; and so of the rest. On the other hand, if a *suspending* power were exercised in an instance never so beneficial, the power is not a legal prerogative, and is not to be endured, because of its dangerous tendency. Nevertheless, the particular act done, under colour or pretence of such a power, if in itself for the advantage of the people, will not cease to be so, however illegal the power to do the act may be. Let me only just ask, as it comes in my way, and may in some respects be particularly applicable to the case of the embargo under consideration. Could the Crown now legally create a fo-
reigner

reigner a peer, because it is the general prerogative of the Crown to make peers, when the act of settlement has in that particular instance, restrained the general prerogative of the Crown? Certainly not. And for the same reason, even supposing it to have been at any time an inherent power in the Crown to prohibit the exportation of Corn, the Crown cannot now do it, as positive statute has clearly divested the Crown of the power.

What I have said is, I think, sufficient to shew, that Mr. Locke is very much misunderstood and misapplied, in the words last referred to, which have been much insisted upon, when they are produced as an authority to prove, that the *tendency* of the Embargo to the good of the people, is the rule for deciding if it is an exercise of a legal Prerogative or not. I will even venture to say, Mr. Locke's words are a clear authority upon my side, to prove, as far as the reasoning and opinion of that great writer can do it, that the *dispensing* or *suspending* power, which is the only thing that can be named as a Prerogative, under or by virtue of which the Embargo is laid, is not, and cannot be a Prerogative.

I will however — — go yet a step farther, and I hope I shall satisfy y — —, that the use made of this authority of Mr. Locke, taken as the — — has stated and explained it, even upon his own argument, is as dangerous and unsatisfactory as any thing can be. For — — suppose for once, it was the tendency of a particular act that was to decide for or against the legality of that act, as an exercise of a legal Prerogative, I only ask, what would be a more uncertain or dangerous rule of decision, with regard to the suspension of an act of Parliament by the Crown, if the decision is to be with the Crown; and with the Crown it must be, when the suspension is to be the act of the Crown; and consequently, according to the argument, the legality of the act to depend upon the Crown's decision? I say, what more uncertain or dangerous rule of decision? I do not say but a case may be put, so strong, that there

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cannot

cannot among men be a doubt as to the tendency of a particular act of suspension, as in the very instance of prohibiting the exportation of corn, when famine is staring you in the face, and in such a case, the Crown would decide just as every other person would. At the same time, one may affirm, that even that case is not such an one as will always admit of an absolute mathematical certainty; for men may be, and they often are, divided in opinion as to the appearances of scarcity, whether real or not, and to what degree; and consequently whether it is fit to prohibit the exportation of corn or not. But supposing that to be one clear case, I ask, how many more clear ones can be mentioned? And I am entitled to ask the question, because if a power in the Crown to *dispense* with an act of Parliament, for the good of the people, is the foundation of prohibiting exportation, supposing exportation to be authorized by act of Parliament, the same *dispensing* power may be exercised as to other acts of Parliament, on the like ground of the good of the people; and so must extend to the whole statute book. Now — —, how many cases are there, in which all mankind would, to a man, be agreed, that it was for the good of the people to *suspend* any one particular act of Parliament? What act is it, that if a question of Repeal were in Parliament, y— — and t— — o— — h— — e might not be divided in opinion about? some thinking it of a tendency for the good of the people, others thinking the contrary, and the people without doors also divided in opinion. Would it then be a safe rule to make any one act of Parliament, *in the general view of things*, depend on the decision of the Crown, for a *suspension*, be it never so short, which is nothing else than a temporary repeal?—Or is that a rule, upon which to rest or trust the decision of the Legality of any particular act of a *suspending* power exercised by the Crown? I will not, I need not, lengthen the Argument. It is clear nothing could be a more dangerous, uncertain, and arbitrary rule: nothing so naturally tending to found a despotick power in the Crown over acts of Parliament.

And

And therefore nothing can be so fallacious or misapplied an argument, as that drawn from Mr. Locke, explaining his words in such a sense. His rule would not apply: it could not even to particular acts or exercises of any power or prerogative. He did not intend so to apply it. As a rule with regard to one or another general power claimed as a prerogative, it is a sound and a safe one, and he applies it no otherwise himself: But, as I said, it is not only foreign to the purpose, as it has been applied in the argument, but it is clearly against the thing contended for by those who do apply, or rather misapply it in that manner.

One single remark ——— I must be allowed to make, before I close my observations upon Mr. Locke's authority. The last s——n of P———t set out with the wildest doctrines, extracted *piecemeal* from the same Mr. Locke, in favour of Liberty; of Liberty run mad with notions extravagant, ridiculous, exploded, and thank God! by the whole legislature condemned. This s——n begins with doctrines again extracted also *piecemeal* by the same persons, from the same author, trumpeting forth a tone of tyranny, more hateful, and more dangerous, because more extensive, than any promulgated in the worst reign of the worst of the Stewarts. I hope, *these* will meet with the same contempt as the others did. Indignation is the due of *both*.

After all ——— what is this old and stale argument now revived, as to the *tendency of the exercise of a prerogative for the good*, and not for the *hurt of the people*? What is it, I say, taking things on a general view, but the exploded argument of *necessity* repeated in other words? The wildest bigot to Prerogative, or absolute power, (if I may imitate the enthusiasm of the ——— and ———s expression, who spoke of the wildest zealots for Liberty) I say, the wildest bigot to Prerogative never pretended, that any Prerogative whatever, the *dispensing* power itself, could or ought to be exercised, but for the good of the people, the Prince indeed always being judge of that. Even *Manswaring* and *Sibthorp* themselves would not have said otherwise;

therwise ;—those monsters of men, who prostituted the pulpit, to preach the impious and nonsensical doctrines, “ that if Princes commanded things against the laws of God or of nature, or impossible, yet subjects were bound to undergo the punishment, without resisting, railing, or reviling.——And that the King is not bound to observe the laws of the realm concerning the subjects rights and liberties ; but that his royal will, in imposing taxes without consent of Parliament, bound the subjects conscience, upon pain of eternal damnation :” —— Even these men, and their stupid doctrines, suppose that what was done by the Prince should be for the public good ; and that what was not so, was in itself wrong ; as certainly what is against the laws of God or of nature must be ; and therefore, as they admit, could not in conscience be *actively* obeyed, for which reason they wickedly and senselessly say they ought to be obeyed *passively*, by suffering punishment. But did not every Prince who exercised the *dispensing* or *disabling* power, pretend that he did it for the good of the people, and that the particular acts by which it was exercised were for the best ends ? Look at James the II^ds declarations for liberty of conscience. What more specious pretences could be devised than are mentioned in those acts of the *dispensing* power ? “ To unite the hearts and affections of his subjects to God in religion, to him in loyalty, and to their neighbours in christian love and charity.” For these great and good purposes, “ he thought fit, by his *sovereign authority, Prerogative royal and absolute power*, which all his subjects were to obey, without reserve, to grant his royal Toleration.” And for that purpose, “ with the consent of his privy council, by his *sovereign authority, Prerogative royal, and absolute power*, he *suspends, stops, and disables* all laws or acts of Parliament made or executed ;” and so forth. These are the words used in one, and they are only a little softened, but not substantially varied, in another of the Declarations of this sort.

Part of that same very illegal act of the *dispensing* power, the declaration in favour of liberty of conscience, unquestionably was, in its tendency, for the good of the people. The first part of it, artfully introduced to colour all the rest, is a toleration to protestant dissenters, exempting them from the absurd penalties of nonconformity. But did that tendency of the exercise make either the particular exercise, or the pretended Prerogative exercised, legal? No. It was equally an exercise of the *dispensing* power, and consequently equally *illegal* in favour of protestant dissenters as of papists, though the tendency was very different in regard to the two. And accordingly when government came to itself, and was upon a right foot, one of the first acts passed after the revolution was, for exempting protestant dissenters from the penalties of those grievous laws that affected them. The preamble of the act adopts the very motives with which K. James gave a colour to his declaration; and the act itself is the best proof in the world, if the fact needed one, that the tendency of K. James's exercise of the illegally assumed power, was so far for the good of the people. Yet that very act of K. James was one of those that cost him his Crown, and, as I have said before, stands the very point condemned by the second article of the bill of rights, as *exercised of late*, without any distinction as to the tendency of any part of it, though the posterior act of exemption manifests the opinion of Parliament that one part of it tended to the good of the people. The difference is this: the act of Parliament was the constitutional relief from the grievance; the act of K. James, let its tendency, in any part, be what it would, was, in the whole of it, the exercise of an unconstitutional and usurped power, against law, and in its tendency dangerous to the liberties of the people.

I will venture to say, that there is not any one notion more exploded, and more condemned by the statute book, than that notion of the tendency of acts for the public good being sufficient to make them legal: and indeed it is one of the wildest notions that ever en-

tered the mind of man; for it goes to cut up all government by the roots, and to make every man a judge and lawgiver for himself. I might have said, that it is condemned and exploded by all morality and sound divinity; avowed and professed only by Jesuits, and such diabolical casuists. But I say, look only to the statute book. What is the language of all your acts of indemnity, passed upon great occasions? I need not mention those in our own memory, passed after the rebellions 1745 and 1715, on purpose to indemnify those who had done acts for the public service against law, and that could not be justified by law, as the stile of these statutes runs. Let me only refer your — to one of the first acts passed after the revolution, *the act for preventing vexatious suits against such as acted in order to bring in their majesties, or for their service.* What does it say?

“Whereas about the time of his majesty's glorious enterprize for delivering this kingdom from popery and arbitrary power, and in aid and pursuance of the same, divers lords, gentlemen, and other good people, well affected to their country, did act, &c. in which proceedings, some force, &c. were unavoidable, which in a time of common peace and safety, would not have been warrantable; and also since their Majesties happy accession to the crown, by reason of the wars and troubles raised and occasioned by the enemies of their majesties and this kingdom, divers like matters and things have been done, all which were *necessary and allowable*, in regard of the exigence of public affairs, and *ought to be justified*, and the parties concerned therein indemnified,” &c.

Surely, — — —, if ever there were acts that tended to the good of the people, these mentioned in this act were: — acts to rescue the kingdom, its religion and laws, from ruin and destruction; — and done at a time, of all others, when no law could be said to be in force, but the law of nature, which stimulated and justified what was done, the Government being totally dissolved; so that one might say, there existed no law of the land to be transgressed, or that could be a ground of action

or charge, as where there is no law there can be no transgression. Yet even for such acts done, acts *necessary and allowable*, as the statute speaks, and done under such circumstances of a suspension *in fact* of all the laws in the kingdom, did these Saviours of their country take and pass to themselves an indemnity? They loved the constitution they had saved so much, that they would not suffer the very act of saving it to have the appearance of giving it a wound. And though these were the acts of subjects, it makes no manner of difference; for I do maintain, that in law, and legal and constitutional language, the Crown has no more right to *suspend* acts of Parliament, or to act against them, than any subject; because, as I said before, the one is not more than the other the legislature. This however is a distinction totally immaterial, because according to this constitution, there can be no act of the Crown, but some subject is responsible for it as the adviser: and in the matter before us, the Lords of his Majesty's Privy Council, state themselves, justly, as answerable to Parliament for the act they advised. Over and above all which, I might add, that the case I have referred to was the strongest and most favourable that could be, for if it was not the Crown which did the acts indemnified, it was not *one* or a *few* subjects, but the whole people and Parliament itself that were the actors, and had not the caution for the safety of the constitution been great, in proportion to the zeal that had just redeemed it, men might have thought, with good reason, that the very act of Revolution, and the statute that placed the Crown on William and Mary's heads, were sufficient to justify every part of the work, as well as the best proof of the tendency of every thing done in aid and pursuance of it.

— — There were other acts in the reign of William and Mary, of the same tenor and effect with that I have quoted, particularly in 1690 and 1692, on occasion of threatened invasions. I only mention them because the persons first named as the actors in the things thereby justified and indemnified, are *the Lords and others of the*

Privy Council, and the chief act done against the law, was the causing the militia to be raised *otherwise than as authorized* by the acts of Charles the Second, which were not more sacred than the acts of the same reign, permitting the exportation of corn. The Privy Counsellors, even of those days, were not shy to acknowledge on the records of Parliament, that they had acted against law and against acts of Parliament, though the acts they had done were *necessary* and for the *public good*; nor did they despise and refuse an indemnity, but accepted it, to transmit it to posterity as a safeguard of the constitution, that in future times no evil might come to it, from a precedent of the highest necessity, and most important service to the country; because they knew, as we do, *omnia mala exempla a bonis orta sunt*. His present Majesty's Ministers are ashamed or afraid to own that an act they advised was not legal, though they say it was necessary, and all agree with them, that, from various neglects and criminal blunders, it was *at the time* become so necessary as to be unavoidable. Rather than own a breach of the law, even a *necessary* one, that ought to be justified, they will defend the act done as strictly legal, at the expence of maintaining a *degree* of the *dispensing* power: I say a *degree*, for I will not make it worse than they do themselves—They are so much more delicate or infallible than King William's Ministers and Privy Counsellors, that they are affronted with the offer of an indemnity: and one ——— says, *timeo Danaos et dona ferentes*. I believe it. All ministers, when they are in the wrong, are afraid, especially of those that are able to shew their error, and by offering a plaister discover the sore. I truly believe they are afraid, for the same reason as the Trojans dreaded their enemies, and suspected their gifts, that is, lest the city should be surprized and taken. But ——— the fall of fifty ministers, or fifty successions of them, if the greatest that ever were, is not to be compared with one thrust at the constitution, let the instrument be never so harmless, or the intention never so innocent: for she may be wounded even *in the house of her friends*, and
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alta sedent civilis vulnera dextræ. If the — is afraid of those who proffer gifts, I will be jealous of those who refuse such as are now tendered, and refuse them on such grounds as I have heard this day, in my opinion, dangerous in the last degree to the constitution; and only so much the more so that they are the arguments of her once most zealous friends, to whose past services I will consent to give any reward, but that of wounding the constitution further; one hair of the head of which I would not have hurt for all Ministers, or any *prime Minister* on earth.

The — who founded so much upon the authority of Mr. Locke, in his second speech, has taken up some time to justify the argument of the — who sits near him, from a misinterpretation which he thought some other — put upon it, as if the — had argued for a *general* and unlimited *dispensing* power; whereas he only maintained it in cases of *necessity*, and till Parliament could meet: and says the —, that is the circumstance which distinguishes the act in question, from those exercises of the *dispensing* power complained of in former times —, that it was done only when Parliament could not meet, and till it assembled: and farther, says the —, it is singular for criminals to call their judges to condemn them; yet the King's servants have called the Parliament to judge of the act they advised, and to condemn it if it is wrong.

—, If you have honoured me with any attention to what I have said, you will not think that I mistook or misstated the argument of the — and — which the other — has explained and enforced, as well as justified. I do not think any of your — did mistake it: but I did not like it as he gave it us, and I hope very few of your — were pleased with it. It is true, the — and — was but for giving us a taste of the *dispensing* power; I do not chuse to touch the cup: and therefore I reject the distinction, as to the recess of Parliament, totally, and I have endeavoured to disprove the foundation of it. Whether I have succeeded, your — are to judge. I can make no distinction but one,

and that I do make, between an act of *Power*, and an act of *Prerogative*. The Crown has the whole force of Government in its hands, all inferior Magistrates and Ministers of Government under its orders; and what the Crown commands they will obey, and in general I think they ought, as it must indeed be a very strong act against law, that they should dispute or disobey, as it would be dangerous to constitute them judges over the Crown. But Parliament will make the distinction between Power and Prerogative, and judge upon the act done accordingly. The act in question, I say is an act of mere power supposed to have been impelled by necessity, and tending to the safety of the people, and as such it is to be allowed and justified; but it is not to be taken as an act of Prerogative, because it is not a legal act, there being no such Prerogative in the Crown, as a *dispensing* power for one moment, or in any one moment: and therefore it was, that I very soon told your — I objected to the words *Royal Authority*, as I hold *authority* to be *legal power*, whereas the Embargo is, in my opinion, *power without law*, and *against law*, consequently is not authority in a just sense.

As to what the — — — says of the Ministers calling Parliament *their judges* to judge of the act they advised, I see no weight in the observation at all, upon the footing of the doctrine advanced by himself, and by others whose arguments he has supported. Had the Ministers told us, that they had advised the Crown to an act of power which they were sensible was not agreeable to law, but was so necessary and salutary, that they were confident it would be approved, and that they had, in that confidence, called Parliament to submit their conduct to the judgment of Parliament — I say, had they held this language, I admit they might have said there was some modesty at least in calling their judges to sit upon them, and that it would have passed for a presumption of innocence as well as a proof of candour. But what are we told? Why that the Crown had a right to do what it has done; that it was the Prerogative of the Crown to do it; and all

all the modesty that can be pretended, is that the Ministers did not give a longer line to the exercise of this Prerogative, but called Parliament a little more early than usual, though perhaps, if the whole truth were known, Parliament was really called, (as it was at the time alledged) only for the India business. It is impossible it could be for the embargo, as the embargo was not laid when the Proclamation for calling the Parliament was issued, viz. 10th September. However, if the doctrine that has been advanced is just, Parliament has no judgment to give of the act done by the Crown; but are only to judge what they themselves ought to do in the same affair. For now that Parliament is met, all that is told them is this:—"You may have thought, when at your country houses, that the embargo was not a legal act; but we let you know you are mistaken; for the embargo is the exercise of the ordinary and *undoubted Prerogative* of the Crown." I own I did not expect to hear such news, and if I believed them, I should not think the Parliament was met upon a foolish errand, but I would say it was upon a very unhappy occasion; and at the best I think there would have been as good reason, and not more modesty, in calling Parliament in the beginning of the Winter, to acquaint them, that during the recess, his Majesty had thought fit to create some new Peers, and to change his Ministers, which are both the undoubted Prerogatives of the Crown, whether exercised properly or improperly.

—, The — and — upon the —
—k, a new convert to Prerogative, has thrown his abilities, and the weight of his situation, gained by other doctrines, into the scale of the *dispensing* power; and in maintaining that degree of it contented for by the other — whom he has supported, his — has taken the ground of the law of nature, that first of all laws, *self-defence*, recurring again to that *necessity* which is superior to all law, and calling up the great maxim, *Salus Populi Suprema Lex*: and his — tells us he goes to *common sense*, he wants no statute for that which is written
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in the breast of every man, that law of instinct, that inherent power which must be in every state as much as in a single person, to defend itself:—and that if he thought the law of England (which he had hitherto thought to be perfect) was so destitute of sense and reason, as not to have that great fundamental of all law and government, *Salus Populi*, &c. for a part of it, he would move for a Bill to enact it, and make it part of the law of the land. ✍

The ——— says he was one of those who a—d his ——— to the measure in question, and he thought he had done right. He thought his ———y deserved thanks for the care he had taken of his People, but he now finds that there is to be blame even when he is *dispensing good* to the nation, and the view is to cast a slur upon the gracious act of the Crown, and to hold forth to the Publick that there has been a Violation of the Constitution. And if it is so, says his ———, he ought to change his tone, and *cry mercy*; and the first thing y— ——— ought to have done was to call the offenders who gave this criminal advice to the bar ——— but, says his ———, I will not be so mean as to sculk under a pardon, till I find I am condemned, and it is hoped y— ——— will not condemn any unheard. — The ——— is ready to enter upon that ground with any man, and to maintain, that it is not only the *Right* but the *Duty* of the Crown to *suspend* the execution of a law, for the safety of the people, as much as to keep them from starving;—that the Crown is bound in duty to protect the people from ruin, and the Prerogative (as another ——— had expressed it) is nothing but a power to protect them; and, says the ——— and ——— upon the ———k, it is a strange thing if the act was wrong which every body says they would have advised—that it is a strange crime to be meritorious—a strange criminality to save a country from ruin—from famine. His ———, however, challenges any one to shew that act of parliament, that excludes the Crown from the power of stopping the exportation of grain;—there is nothing, he says, in the whole statutes, from *Magna Charta* down,

down, but this one simple thing, that the sea shall be open, *soit la mer ouverte* — that the Crown had done no more than to keep wheat in the country to prevent a famine at home, and that only for forty days, till the parliament should meet; — and, says the — in the warmth of his fancy, that is such a power as he believes *Lucius Junius Brutus would have entrusted Nero himself with*; — adding, as if that was not an expression strong enough — *it is but forty days tyranny at the outside.*

—, When I repeat these words in which I am sure I am not mistaken, I cannot go farther without disburthening my own mind of its feelings. That — — is the last person from whom I should have expected to hear such words. But I own a great deal of what he has said shocks me; — by nothing that he has offered am I convinced: And though it may be bold for one of those not entitled, and not expected to be so learned in the constitution, and with still less pretensions to be learned in the law; yet I cannot stir from my place till I have done some justice, unable as I am, to what presses upon my poor understanding.

Forty days tyranny! — — Tyranny is a harsh sound. I detest the very word, because I hate the thing. But are these words to come from a — — whose glory it might, and ought to have been, to have risen by steps that liberty threw in his way, and to have been honoured, as his country has honoured —, not for trampling her under foot, but for holding up her head? The — — in the b — — has said, as it became him to say, *forty hours, nay forty minutes tyranny* is more than Englishmen will bear. I have used my best endeavours to answer the Argument which is the foundation of the distinction to which the forty days alludes, by argument founded in principles; I will now give the — — one answer more, and it shall be *argumentum ad hominem* — That — — has, I believe, said on other occasions, and he said well, that the price of *one hour's* English Liberty, none could tell but an English Jury, and juries, under the guidance of a *certain* — —, have estimated it very high,
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in the case of the meanest of the subjects, when oppressed only by the servants of the state. But forty days Tyranny over the nation, by the Crown! who can endure the thought? — —, less than forty days tyranny, such as this country has felt in some times, would I believe bring your — together without a summons, *from your sick beds, riding even upon post horses, in hot weather, faster than our great Patriots themselves to get a place or a pension, or both*; and, for aught I know, make the subject of your consultations that *appeal to Heaven* which has been spoken of. Yet establish a *dispensing power*, and you cannot be sure of either liberty or law for forty minutes.

— —, I have as great a regard for the principles of the law of nature as the — — can have. I love them. I know indeed the law of nature is not a law for Men in their present state; it is too weak to bind them; and it will always with some danger be recurred to, as a rule of conduct, even in cases of the most extreme necessity. However — — I am ready enough to admit that every state, that is, all government, as well as every individual, has an inherent right to act, and must, for self-preservation, act upon that principle of the law of nature *self-defence*. But — — do not let us be led away with a name without proper ideas. Even that great principle of *self-defence*, sacred as it is, does not suspend or make void any positive law or constitution whatever: it only takes the case acted in *out of the law*, leaving the law in its full force. So a man who kills in self-defence is acquitted, not because there is no law against murder, but because his case is not within that law. I cannot help therefore thinking, it is but an incorrect use of the term *self-defence* to apply it to this case, by saying the embargo was self-defence against famine. The laws for exportation have not overlooked or omitted to provide for the case of self-defence against famine. Your — will understand what I mean, when you recollect that as the laws stand there are limits set to the liberty of exportation, to stop it when the prices come to a certain pitch, and that is the remedy which
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the legislature has saved against dearth; the *fact* then suspending the *law*. I do not say but such a necessity may occur as to make it necessary to draw another line, and so we have had, and now again, I presume, shall have a temporary law, narrowing the line. But that is an extraordinary case, the cognizance of which, Parliament has reserved to itself, to apply an extraordinary remedy to it; and has not left it to the superior wisdom of the Crown and Privy Council to anticipate that extraordinary remedy by a *suspension* of the laws, within the bounds prescribed by parliament, which will of themselves stop the exportation as soon as Parliament has thought, in a general view of things, it ought to be prevented.

— I revere the principle of *salus populi suprema lex*. And I do not think we need an act of parliament to introduce such a fundamental into the law of England. But what does this principle teach? Why this, that in the *making* of laws, the safety of the people ought to be paramount to every other consideration, public or private; and in the *execution* of laws, or obedience to them, that it may for an instant transcend them all, so that if a case happens in which positive laws cannot be executed, or obeyed, and at the same time that great principle pursued, positive laws are and ought to be disobeyed, or not executed at peril, the maxim followed, and the justice of government relied upon for the justification and indemnity: a hazard which under no wise and good Government, any man acting with an upright intention need be afraid of.

But the Principle, even upon the widest ground of the law of nature, does not import that all positive laws are by the force of it *ipso facto* suspended or repealed; in cases that concern the execution or obedience of them. It supposes the very contrary; and never could do otherwise, unless we were at once to say a thing so absurd as this, that not only the Executive Power of Government, but every subject is vested with a *dispensing* power; as the principle operates with equal force on single subjects, as on the Executive Power itself, and is upon every

every individual a binding duty, as far as there is an obligation upon any one to consult the safety of the Commonwealth. If therefore the debate were, upon the Act in question, Whether to be justified or not upon this great principle, supposing it not justifiable upon any other, Government most surely is intitled to avail itself of the principle, to qualifying the Act, as to bring it within it. But if Government maintains the Act to be the exercise of Legal Power, and consequently against no law, the principle of *Salus Populi*, &c. which always supposes the direct contrary, is totally out of the question: and indeed I cannot help taking notice of it as an inconsistency, that, in my apprehension, runs thro' the whole of the argument of the — and — —, which I am now considering, that he resorts at all to extraordinary principles, and particularly to those of the law of nature; for if, as his — and other — have argued, the Act in question is a legal Act, and the exercise of a legal Prerogative, it needs no *Salus Populi* *suprema lex*, for a justification or excuse. It defends itself, and is within the protection of the positive law of the land; and consequently the law of nature has no more to do with it than the law of any foreign State, that has no authority in this Country. For my part — — the application I do, and shall, upon every such subject, and occasion, as the present, make of the maxim *Salus Populi*, is this, that as I think the safety of the People could not be secure one moment, if the Constitution were not preserved entire, and unhurt, the supreme law with me shall ever be to maintain unrelaxed and unenervated the fundamentals of the Constitution, and, as one of the principal of them, to exclude every, even the least degree of a *dispensing* or *suspending* Power in the Crown, the natural and necessary tendency of which is to destroy the Constitution, and of consequence to destroy the safety of the People.

And here — — I would only ask by the way, if ever the principle of *Salus Populi* was made or pretended to be made, a ground for the Crown's assuming or exercising a power to *suspend* the *Habeas Corpus* act by order

order of Council, though nothing perhaps more directly concerns the safety of the State, on some occasions; and therefore it is the first thing parliament does in emergencies of imminent danger? These *suspensions* are, I hope, the only species of *Dictatorial* power, that this Government is acquainted with. But, thank God, they are no part of the Constitution, nor do they depend on the pleasure, or even the discretion of the Crown. One Great — has indeed mentioned the *Dictatorial* power, in the debate, and endeavoured to assimilate this act of the Crown, of suspending the laws for the exportation of corn to it. But surely, after saying what I have just now said of the suspension of the *Habeas Corpus*, as totally beyond the power of the Crown, it is needless to give any other answer to this attempt to compare the Crown's *suspending* these laws with the *Dictatorial* power among the Romans. If the *suspending* or *dispensing* power of the Crown were any part of this Constitution, it would indeed be a *Dictatorial* power with a witness; and a perpetual one too. So that we should be so much worse than the Romans were, as their Constitution slept only during the existence of the *Dictatorial* power, which was but short, and expressly given by the Senate; whereas ours, without the intervention of our Senate, would at once and forever be destroyed totally.

The — and — — speaks of *meritorious criminality* as strange; and it would be so. But *meritorious illegality* is not so strange, or an action meritorious in itself and happy in its effects, though against law. The merit consists in running the risk of the law, for the publick good; as in the instance alluded to by the other — and — — on the cross bench, of the Roman General who fought against orders, and was rewarded for saving his Country. On the other hand, if an Act is authorized by law, there can be no such risk, nor consequently any other merit than that of doing one's duty.

I agree with the — — who holds the —ls of S. of S. that he would be a poor Minister indeed, who would not run such a risk, when the safety of the State required it. I will not take the — —'s instance of sign-

ing a General Warrant, as he *arbitrarily* said he would do, notwithstanding all the noise that has been about them; for a General Warrant is such a piece of nonsense as deserves not to be spoken of, being no warrant at all, and incapable of answering any one purpose, in any case whatever, that a legal warrant would not better attain. But this I will say, that without being a Minister, as an inferior Magistrate, or even as a private subject, I should not hesitate, upon good ground of Public Safety, to stop, if I could, any ship from sailing out of port, to the destruction of the State, although no embargo subsisted: and in this case, if Ministers had held to the Justification of the particular Act, upon the circumstances, they had done well. But they have justified the Act, by maintaining a Power which I cannot acknowledge. I blame not the Crown, nor the advisers of the Crown for *dispensing good*, nor do I wish to hold out to the people a violation of the Constitution; but I will blame Ministers for asserting a Prerogative in the Crown, which, instead of dispensing good, would dispense much evil; and if they will hold out a power unconstitutional, and destructive of the vitals of the Constitution, they must excuse others for holding up the barrier against such a Power, and defending the Constitution. I think Prerogative is a Power, and it is a duty also to protect the People; but I think a *dispensing* Power is no Part of the Prerogative, and equally against the duty of the Prerogative, and the safety and Protection of the People; and to tell y— the truth, I am astonished how a H— of L— could have patience to sit and hear so much of it: The — spoke as if he joked, and certainly was in jest when he talked of *crying mercy*, and *skulking under a pardon*, of calling to the bar and condemning. I will not enter into what the other — and — who spoke before him said of his not being a wise man who refuses God's pardon and the King's. But — I have had occasion to mention instances of your — ancestors, when they did things meritorious indeed, though not authorized by law. They did not cry out for the *mercy*, but they

they claimed the *justice* of their Country: and their Country protected as well as applauded them. Parliament past indemnities; nor did these brave men think it any meanness to cover themselves; I will not disgrace their heroism so far as to say they *skulked* under a pardon, though they sued for and accepted an indemnity *in their own persons* for the CONSTITUTION. Let me tell the — who jokes at this rate, that the time has been, (and I almost wonder we have not seen it *very lately*) when a word in defence of any sort of *dispensing* power would have brought the greatest — in the kingdom to the Bar: Sure I am it is wonderful forbearance that no one — insisted upon some very alarming expressions being taken down. It is a kind of complaisance or acquiescence that I fear more than the — — needs fear the *dona ferentes*. Language of this sort, sat under quietly, — Language so directly trenching on the Constitution, is, I am afraid, a disagreeable symptom of want of health in the Body Politic. We have heard, *it has been said*, in justification of the subjects resisting law, and rebelling, that the *original Compact* was broken by the Legislative Power, in one Act of Parliament, which was but a just and reasonable exertion of what stands the declared, asserted, and recognized power and right of Parliament: and now a Jurisdiction is to be given to the Crown over the Legislature, by a *suspending* Power, by which every Act of parliament may be broken. Is it left Parliament should again, as it was traiterously said last year, BREAK THE ORIGINAL COMPACT by some other Acts of Parliament? How two such opposite opinions are to be reconciled, I know not! Or how they can *both* be made to quadrate with a zeal for Liberty, which has perhaps run wild; I leave that to those who hold and have given both opinions. But I think they are both dangerous opinions; and by much the more so that they are the opinions of the same persons, which puts their *principles* beyond the reach of my line. Thus much I will say, the *dispensing* Power, and the sacredness of Acts of Parliament, are no jokes: they are not subjects,

subjects, nor is it a season for levity, to sport with. Your ——— fathers thought them no jokes: and if such doctrine, as has this day been advanced, prevails or takes root in this ———e, I doubt the Constitution must seek for sanctuary elsewhere than within these walls, the very hangings of which ought to put us in mind of the glorious deliverances English Liberty and English Spirit have obtained.

—— The ——— calls upon any one to shew the Act of Parliament that hinders the Crown from stopping the Exportation of Corn. I think many Acts have been pointed out; and I shall not now go back to them. But as to the idea that all the Statutes from *Magna Charta* down import no more than that the sea shall be open, I confess I do not understand it: it must be owing to my dulness. I have no notion of an Act of Parliament to make the sea open to our own subjects; there is not a single word to that purpose in *Magna Charta*, and I thought the Controversy, that has loaded the world with learning as to *mare clausum et apertum*, had only been between us and foreign nations. I hold it to be a fundamental law, that the sea is open to ourselves: and I wish the ——— would point out a Statute opening the sea, to the subjects of England, where exportation had not been restrained by some antecedent law. But I can surely tell h—— of some laws relating to this very matter of the exportation of Corn, which do much more than make the sea open: for the Bounty Act makes the Treasury open too, and gives the exporter an indefeasible right, unless taken away by Act of Parliament, to a reward, in certain cases, for carrying his corn to the open sea. Whether it be true or not what a ——— said of Corn having been made too much an article of Commerce, is not the present enquiry: but so the law stands: and it has proved a beneficial law to the nation, not only by promoting agriculture, and bringing money from abroad, but by preserving plenty of corn at home, more than ever was known before; and by saving the great expence to the nation occasioned by frequent scarcities that prevailed before

before these laws were made: and I do not think such a sudden instance of scarcity as the present, or the present benefit to the public, from the stopping of the exportation by the Royal Power, will appear to be a sufficient ground for vesting in the Crown a *dispensing* power, as a subsisting right, in order to *suspend* these laws when parliament is not sitting, or till it meet, even under the favourable colour, or for the necessary end of preventing famine.

— The ——— has indeed been pleased to say that *Brutus* would have entrusted *Nero* with such a power. A ——— has already given this good answer, that though *Brutus* might have entrusted *Nero* with that power, *Brutus* would have been very sorry if *Nero* had exercised it when not entrusted to him. I will add to that answer, that however *Brutus* might have entrusted *Nero* safely with a single act which could do nothing but good, he certainly would not have chosen to entrust the best of the *Cæsars* that ever governed the Roman empire, with a power, under which, for one good act of a *Titus*, a *Nero* might have done as many bad as he pleased, and swallowed up Liberty entirely. Such and no other is the *suspending* power, under which the act in question is justified by the ———, as an act of legal Prerogative.

— The ——— and ——— the better to accommodate the present case to the great principle of *Salus Populi*, and to prove the embargo to be within the inherent power of the Crown, upon that principle, has pointed at a similarity between the stopping of the exportation of corn, and the obliging to the performance of quarantine. And the ——— asks, Where is the act of parliament that enables his Majesty to impose quarantine, all the statutes on the head being only to regulate it? Now for answer, I hope I may have leave to ask a question in my turn, to make the two cases parallel: and my question is, Where is the act of parliament that forbids his Majesty to impose quarantine; or that enacts, that all ships foreign and domestic, shall have free entrance into the

the ports of the kingdom without performing it? I know there is none, and such a law would be indeed absurd. But till such a law does exist, it is equally ridiculous to ask for one to impose quarantine, by repealing the other. For, most undoubtedly, it must be inherent in the executive power, to have a right to use means to protect the nation from the plague, not only upon the general principle, that the executive power may act in things for the good of the whole, where there is no prescription of law, but because self-preservation is a fundamental law interwoven in all government, as well as in the human frame: and the end of government is, to protect and defend the whole from all external evils, of which pestilence is among the worst. But not to rest on general principles, nobody can be so ignorant surely as not to know, that the power to impose quarantine is the prerogative of the crown, settled by prescription, and proved by immemorial usage, which gives it a legal beginning. The acts of Parliament on the subject do not create, but recognize this prerogative. However, if I could suppose so senseless, and perhaps I might say, so intrinsically void an act of parliament, as one to exempt from quarantine, I believe I should not scruple to break the law if I could, in a proper case, and trust to the justice of my country: but I should neither justify the breach under an act of the *dispensing* power, nor be a bit more ready to run the risk for the having such an illegal protection. I should think the principle of *Salus Populi* applied to excuse the act, not to justify the power, a better shield. And at the same time, it is worth observation, that these very quarantine laws, confined as they are to regulations, prove how jealous parliament has been of leaving either the necessity or mode of it to depend upon the discretion of the Prerogative, though the thing itself be a fair instance of the original, inherent, and just prerogative of the Crown; these regulating laws being, as I understand them, of the nature of explanatory limitations of that part of the Prerogative.

Another

— Another thing has fallen from the — and — on the — k, which I cannot help taking notice of. The — has been pleased to complain of the other —, and — on the cross bench, for declining to give a decisive opinion upon the legality of the embargo, because (as the — on the — k expressed himself) of questions that may arise in *his* — t. And the — on the — k, says, He does not ask what may be pleaded on a demurrer in the *inferior courts*? he stands on *wider ground*, and asks in P — t, what is sufficient to justify the act in question? It is very true, the — and — on the cross bench did decline giving an opinion at present, as to the legality of the embargo, and the reason he gave was a fair one, having been informed, as his — said he has been, of actions being brought, which may come before a certain judicature. But his — very candidly, and with great perspicuity, stated what the legality would turn upon, if judicially tried, and mentioned how fit it might be to prevent such questions on this occasion, by a law for that purpose. This was all very consistent, I think, though it has been glanced at as inconsistent, with the clear and firm opinion given by the — upon the general point of the *dispensing power*, which his —, without hesitation, and in the true spirit of the Constitution, condemned and spurned. * As for the question of the — and — on the — k, I own both parts of it strike me with surprize, as well what the — does not, as what he does ask: and I would have that —, instead of the question he states, asks what can

* The — and — on the cross bench declined, for the reason he mentioned, at *that time* giving any opinion on the *legality* of the embargo, on its own particular grounds of law; he has since had occasion to declare his opinion, that the embargo, by *order of Council*, is a direct suspension of an Act of Parliament, and therefore *illegal*. In delivering this opinion, the — made a most excellent speech, supporting it by the dearest principles of the *Constitution*, and animated with the true fire of *LIBERTY*; which has met with universal applause, and for which his — had (upon the spot) the *warmest thanks* of the known and most zealous friends of Liberty, and of the Constitution.

justify an act questioned in any court of law, inferior or superior, but a legal defence? For certainly, if the embargo is not itself a legal act, within the known powers of the Prerogative, it can afford no legal defence against any action brought in the courts of Westminster-hall. I am sure the — on the —k, can neither have forgot, nor can he differ from a very well founded opinion, which he *knows well* has been given in *one* of these courts, and not a great while ago, "That judges can decide only *according to law*, and are "upon their oaths to pronounce what is law, and that "they can regard nothing but law, not even votes of "Parliament." Why then ask even in P—, or in the H— of L—, sitting in its political, not in a judicial capacity, hearing no cause, nor having any cause before them. What is sufficient to justify any act, if a *legal* justification is meant? Were the H— of L— hearing a cause touching the embargo upon a writ of error, would any — in the H—, would the great — who presides in that H—j—e, give his opinion upon any other ground than the *known law* of the land, which no opinion, even of the H— of L— in its political capacity, can alter? Courts of law will receive the law from Parliament, and the expositions of it from the H— of L—, as the judicature of the last resort: but I hope they will always judge by the law, and by no other rule whatever. I trust never to see the time come again, when judges will pronounce upon the Prerogative of the Crown, as dictated to them by a Prince or a Minister, or even by a political opinion of either House of Parliament.

— — There is but one thing more I can at present remember, of what dropt from the — and — on the —k. His —, aware of the great affinity between the *suspending* power, and that other usurpation of the Crown which usually attended it, the *raising money* without consent of Parliament, (as to which, and even the power of Parliament in the matter, perhaps his — entertains some peculiar notions) has thought fit to make a distinction between these two powers; and the one, I mean

mean that of raising money, his ——— totally condemns and explodes, though his argument of this day has been to support and maintain a degree of the other; that is, in cases of urgent necessity for the public good, and at least till Parliament can conveniently be assembled.

The ——— says, that the *purses* of the subject stand upon quite a different footing; that the matter of money has undergone many statutes, down from *Magna Charta* and the statute, *That no tallage shall be levied, &c.* and, in short, that it is clear law and constitution, that no money can be raised but in Parliament. And his ——— further adds, that as to money, there never can be a pretence of necessity for raising it during the recess of Parliament by an act of the crown, not even in case of the most imminent danger of invasion; because every body knows the difficulty of assembling forces, and bringing an army into the field, with all its appendages of artillery and baggage, which occasions so much delay, even where there is no want of money; and how long time it would take to levy any money from the subject by such means as could be used in the greatest haste: so that there never could be any difficulty in convening the Parliament before any thing could be done that way, and therefore no pretence to anticipate their meeting by such attempts.

—— I think the purse of the subject is very sacred, and that none have a right to put their hands in it but Parliament. I go in that doctrine as far as the constitution carries me, and that is far enough for the security of the subjects property, though I have not any peculiar notions about the magical virtue of representation, and other dreams of that sort. The King and Common-Council of the kingdom are the known ancient, and acknowledged legislature, and I am not for loosening this pin of the constitution as to money, more than any other thing.

But I must at the same time fairly tell your ———, that if the opinion I have as to the *suspending* power, or the raising money, which are, I am sure, brother's children, stood upon any of the distinctions made by

the —, I should think it very poorly supported. Nor can I in any sort or kind distinguish between these two usurpations, which always went together. I have one short logic for both: I have mentioned it before; namely, That the Crown is not the supreme sovereign legislative power of this constitution: and that as money must be raised by Parliament, whether the thing be taken on the more abstracted and radical principles of the original constitution, or on the statutes and usage respecting it, which I hold to be all but declaratory and explanatory, from the first to the last of them) so I think every other law, of whatever kind, must be both made and repealed, or suspended mediately or immediately, by the same legislative power that can alone raise money: and I know no greater degree of sacredness in those acts of Parliament that secure the purse of the subject, than in those that secure to him the possession of every benefit of law he is entitled to enjoy. I see no difference between an edict of the Crown to take money from the subject without authority of Parliament, and one to keep money from him that he has a right by act of Parliament to receive; and therefore, I think the Crown has not, in any case, a right to suspend the bounty-act, by which the exporter of corn is entitled to receive so much money for every quarter he exports.

The princes who were put to shifts for raising money without consent of Parliament, because they quarrelled with their Parliaments for not tamely surrendering the constitution, and all their rights, and liberties to them, had no other way of doing it but by levying and forcing money from the subject, by various ways and devices. But if that trade were ever to be resumed as the country is now situated, perhaps a fit statesman might for once at least, or for a short while, *during the recess of Parliament*, fall upon a method of raising more money, without calling for a penny from the subject directly, than was ever raised by ship money, loans, &c. Suppose only the King was to be advised by the casuists of state necessity, to suspend all the appropriating acts, and stop the issues at the Exchequer to the

the public creditors, it would turn out to a better account than when Charles II. shut up his Exchequer, to save paying his own debts, that would not be raising money without consent of Parliament, but only *suspending* some acts of Parliament; yet I believe this country would hardly furnish a minister bold enough to advise the project, even if an enemy were burning our fleet again at Chatham; which has been mentioned by one great — as an instance of urgent necessity and immediate danger; though the — and — — on the — — k does not seem to think even that or any other exigency would be a pretence for raising money without consent of Parliament.

— — To me the *dispensing* and *suspending* power, and the raising of money without consent of Parliament, are precisely alike, and stand upon the very same ground: They were born twins; they lived together, and together were, I hoped, buried in the same grave at the Revolution, past all power of resurrection; and as I think neither of them ever did belong to the Crown, I cannot admit of any doctrine that maintains the one or the other. If I were to make a difference between raising money and the *suspending* or *dispensing* power, I rather think the *suspending* and *dispensing* power the most dangerous of the two, as that which might do most universal mischief, and with the greatest speed, as it includes the whole. I must therefore enter my most solemn protest, and I do it with all my heart against the *suspending* and *dispensing* power in every degree even to the smallest vestige of it.

But — — I pledged myself to lay before you the grounds upon which I charge the servants of the Crown in this business: and I think they are chargeable with the act itself, which is a dangerous infraction of the constitution, made yet more dangerous by the attempt to justify it under the pretence of Prerogative; because, if they had done their duty, there would have been no occasion at all for such an act of power by the Crown; and their not doing their duty, to prevent it, is only to be accounted for by the doctrine we have heard to-day,
from

from which we learn, that the Ministers had taken up the notion of a defensible *dispensing Prerogative*, and were resolved to venture upon the exercise of it, rather than to call for the aid of Parliament. So that the necessity which at last forced them to advise the Crown to interpose, was not only of their own making, but of their *choice*, which caused them to prefer an exercise of power under the name of Prerogative to a relief by law, under the authority of Parliament. For had the Ministers been of another Mind, they would have called Parliament, when they might and ought to have seen, nay, when the Proclamation they caused to be issued against forestalling, &c. testifies they did see, that the remedy was wanted: and if Parliament had been called even *then*, (as it ought to have been sooner,) a legal and more effectual remedy might still have been applied by the legislature, as early as the embargo by the Crown took place; instead of which, Parliament was not only not called, but was prorogued beyond the length of an ordinary prorogation; and still the remedy, which then only could come from the Crown, was delayed till it was unreasonably late, and the evil much increased by the injudicious procrastination. But even this is not all; for I shall also shew, that the conduct, or rather the misconduct, which produced the necessity for the Crown to interpose at last, if it had been attended with no such consequence as a violation of the constitution, and an usurpation upon the rights of Parliament, was, in itself, the most culpable neglect of the public safety, too gross to be reconcilable with any notion of the duty of those who undertake the care of the state, or with any measure of fitness for that situation.

— I will say in general, he is not a moderate Minister, who will rashly decide in favour of Prerogative in a question where the rights of Parliament are on the other side: and I am sure he is not a prudent Minister, who, even in a doubtful case, *commits* the Prerogative, by a wanton experiment, to what degree the people will bear the extent of it.

But

But —, rashly, and wilfully, to claim or exercise as Prerogative a power clearly against law, is too great boldness for this country : and of all things in the world, the *suspending or dispensing power*, that edged tool which has cut so deep, is the last that any man in his wits would handle in England : — that rock which the English history has warned against with such awful beacons : — an attempt that lost one prince his crown, and another both his crown and his head ; and that at length expelled their family out of this land of liberty to the regions of tyranny, as the only climate that suited their temper and genius : — a power, the exercise of which stands branded as the subversion of the constitution, in the front of that *truly* GREAT CHARTER of your liberties, the BILL OF RIGHTS. A Minister who is not afraid of that power, is neither fit for the sovereign nor the subject.

— I love a bold Minister when he keeps in the true sphere. In times of distress and danger, boldness is a jewel : and with joy have I seen bold, even *wild* enterprises succeed, tho' hardly within the die when undertaken.—But the enemies of our country are the proper subjects of that boldness, — not ourselves, not the constitution.

—, I must farther observe, that if Parliament was either not called when it might have been called, or was prorogued, and prorogued to an unusual distance, when it ought to have been assembled, the power that has been exercised, as a pretended Prerogative competent to the Crown during the interval of Parliament, is, even upon the principles argued from on the other side, no mere an usurpation, as if those who contend for it, in that way, admitted what I maintain, that the power has no being at all, in any case or under any circumstances whatever. For it is precisely the same thing, upon the argument, as if the deputy or substitute, who has power to act only in the absence of a principal, should supersede the principal, merely by not calling for him, when there was occasion to act. And at the same time there cannot be a stronger demonstration of the exceeding
great

great danger of this pretended Prerogative of a *suspending power*, even under the restrictions conceded, than this, that the occasion which creates it, depends upon the Crown itself, whose undoubted Prerogative it is to call Parliament, and fix the time of their meeting; so that there can at no time be any security against the exercise of this power, if there were a sinister view to be answered by exercising it.

This, — —, at least we may venture to affirm, that if there were really such a Prerogative, depending for its existence upon the recess of Parliament, there would need to be the greatest imaginable circumspection observed in calling it as soon as practicable, when there was occasion for the exercise of the power, that it might be as short-lived as possible, and as soon brought under the controul of Parliament as could be. On the other hand, if necessity is the sole foundation of this dangerous power, or Prerogative, which-ever it be, it behoves those who advise the exercise of it, not only to see that the necessity is indeed *inviolable*, but that it has not been occasioned by any fault of their own. For if it is not the one, the act is in no way justifiable; and if the other, that very necessity which is the excuse of the act, will be the accusation of those who occasion it; and in place of being justifiable in their conduct, they must be chargeable first with the blame of the necessity, and next with the danger of the violation of the law, as the drunken man who commits murder, justly bears the guilt both of inebriation and bloodshed.

But — —, nothing can so well put the conduct of administration in the true light, which will shew it to be most indefensible, as a few facts, of which it will not cost many words to remind your — —. And let me first beg your — attention to the defence made for administration by themselves, as it has been given by two of the M——rs. One — in a great — (the S—— of — e) has said, he was astonished when he found that in the act passed last session, there was no provision giving power to the King and Council to prolong the prohibition beyond the 26th of August, and, that he
could

could hardly believe it. Another — in a h — — e (my L — P — — l) says, he was amazed when he made the same discovery; and to distinguish his *greatness* by a superiority above the *trifles* of the end of last S — n, he informs the — that he went to B — h before P — — rose, and did not know so much as whether it broke up in May or June. — This is really an extraordinary tone of *burlesque* greatness, and it may, for aught I know, carry a great air with it; but I think it is very *strange* language. And I fancy if your — find any other reason to join in the amazement and astonishment of these two great —, it must be that they were both so ignorant of what it was their indispensable and most urgent duty to be acquainted with, and what I should imagine very few besides themselves did not know. The surprize can only be sunk in another wonder, still greater, that so unaccountable ignorance should be avowed, and offered as an apology for the most inexcusable neglect of a most necessary duty, upon an attention to which the safety of the kingdom depended.

But — —, when was it that these *attentive* Ministers made this *amazing* discovery? So very early, we are told, as the last day of August or first of September, when the prohibition by the last year's act was expired. And what was it that brought so *immaterial* an object, as an alarming scarcity, a threatened famine, under the consideration of the Ministry? A letter which it seems was received from a *watchful Magistrate*, the late *Lord Mayor* of London, who is but an inferior Minister of government, though in an office of great state and dignity.

Thus — —, by the Ministers own account, from the middle of July, when his — called them into his service, to the beginning of September, they had not once bestowed a thought upon the prognosticks or proofs of a general scarcity, though it was the subject of writing in all the daily news papers, the cause of disquiet in all quarters of the kingdom, and of conversation in every company, that of Ministers, I suppose, only excepted:

*Sidera quis, mundumque velet spectare cadentem,
Expers ipse metus?*

The *patriotic* Ministers, however, did not themselves feel; and if we may judge of things that are not seen by those which do appear, they were engaged in the more important business of settling who should *cede* that another might *succeed*, what reversion or pension one should have, and what compensation or encrease of emolument another should enjoy, out of the over-flowing treasury of this *rich, opulent, and unincumbered* country. Had a single hour of the many days spent in adjusting the arrangement for one office, been employed in consulting about the means of preserving bread to the poor, miserable, hungry, and oppressed subject; the flints that struck each other in that jostle for place, might have cast as much light upon the *law* at least, as to have shewn what the contents were of *one*, not to say of *three* acts of Parliament to prevent scarcity and famine, passed but a few months before.

— — What were the circumstances of the country, when Administration was in this callous, torpid and benumbed state? If we compare them with the situation in which things were when Parliament took up the consideration of the corn last session, and passed the several acts for securing a national supply, we shall not be able to avoid seeing a remissness and inattention in government, on this occasion, that is really not to be conceived, even after the ministers have told us, that truly they had not so much as once looked into these laws of last session, so late as the 30th of August, when the Lord Mayor wrote to them.

— — In the petition of the city of London presented to Parliament, which is dated the 17th of January last, it is set forth, that wheat for bread had for three months been from thirty-nine shillings to forty-two shillings. In that situation Parliament thought the matter worthy their attention, and that a remedy was necessary: And three bills were brought into the H. of C. which all passed

passed into acts; one to prohibit the exportation of corn; another for liberty to import oats and oatmeal; and a third for liberty to import American corn. These bills passed the H. of C. about the seventh of February, after which they had their course through the H. of L. and received the royal assent some time after, and your — will please to attend to it, that even before these bills passed, wheat was come down to thirty-five shillings and sixpence; and in April the best corn was down at thirty-four shillings and sixpence, the worst at thirty-two shillings, owing to the remedy interposed by Parliament; which your — see was so quick and immediate in its operation, that the prices fell even before the law was passed: Of such importance and effect is the *proper* remedy, when applied by Parliament *seasonably and timely*. Yet under that fall, three or four shillings below the prices upon consideration of which the city of London petitioned, and the parliament proceeded to bring in bills, did the legislature judge it fit to pass the several laws; and very wisely, because their not doing so would have had just the contrary effect, and have raised the prices above what they were, when the matter was taken up, for the same reason that the doing of it lowered them so greatly immediately.

The prohibition act was made to expire the 26th of August, and the two others for liberty of importation expired the 29th of September: And there was no power given by the act to the K. and C. to continue the prohibition. — So much for what past last session.

Now for what concerns the Ministry of this year, to shew their *attention*. By the weekly returns of the prices at Bear-key, it appears that upon the 28th of July (by which time I believe the Administration had taken its form, for the Dictator was set to work about the 12th) wheat was at forty-four shillings, that is two shillings above the highest price when the city of London petitioned Parliament in January, and no less than eight shillings and sixpence higher than when the bills of last session passed. August the 1st it was forty-five shillings, advanced a shilling; August 12th it was forty-

ty-three shillings; August 18th forty-four shillings; 25th at forty-five shillings; and by September 8th it was got up to forty-eight shillings and three-pence; and was at forty-nine shillings on the 15th and 22d of September.

— The prices at Bear-key are the barometer for plenty and scarcity, which the law has pointed out to Magistrates, and to *Ministers* too, unless it be no part of the duty of Ministers to take care of the provision of the country, because they have not, like the Lord Mayor and Aldermen, the assize of bread to set weekly. The authentic and legal information is at hand, if they will but send to Bear-key or Guildhall for it: And one would think *that* ought not to be omitted at any time when the state of the country as to corn is but doubtful or suspicious. In a year when there had been a scarcity, and no less than three temporary acts of Parliament to provide against it, such an omission must be deemed strange inattention, and unaccountable neglect.

From the list of prices I have given your —, you see how much worse the state of the country was in the months of July and August, than when Parliament was applied to last sessions; still more so than when the acts of last session passed: And the state of the weather we all know was for a long time most threatening, especially coming after a year of scarcity. God knows what would have been the case, if the season had not taken a favourable turn towards the harvest, as in kind providence it did: Yet all this while, not the least mark of care in Administration. The Ministers who had the watch, instead of looking out, seem to have been the only quiet and unconcerned persons in the kingdom: they did not so much as enquire whether government was armed with a power of prohibition.

— This is really hard to be credited. If the Ministers had no friends to inform them of the expiring laws; surely their own reflection, had they used any, might have told them long before the 26th of August, that there was too great a probability some farther remedy would be necessary. And Parliament (if it had been
worth

worth while to give any attention to what they had done) had marked a line of direction for Administration, with the greatest exactness, by making the prohibition continue till the 26th of August, and no longer; because there could not sooner be any supply from the new crop, and it must before then be known what the harvest was, and how the crop turned out: So that if, by disappointment in the crop, there were need for a fresh prohibition or other remedy, Parliament could be called in time to apply it. Parliament had thereby given at the same time, the most explicit testimony, not only that they understood it to be *their* province to give the remedy, but that they had now reserved the cognizance of the affair to themselves, not chusing to delegate it to the crown, even *during the recess*, as had been done frequently before. If Administration had chosen to follow the line given them by Parliament, they had a plain path to walk in; which was no other than this, To keep their eye upon the state of the country; and if there appeared to be the least hazard of the need of a further prohibition, to keep the prorogation of Parliament upon such a foot, as that it could be called in time, and with a reasonable notice too;— a method that the Journals shew has been often practised on like occasions. Instead of this, Administration took no thought, gave no attention to the matter at all; and of themselves neither did, nor shewed any intention to do any thing, notwithstanding the circumstances of the country, as events turned out, made the affair of such consequence.

But — — was the conduct of Administration a bit better, or wiser, or more like government, when they were waked out of their first sleep, and goaded on to their duty, by others to whom their country was more obliged? Not one whit; but if possible rather worse. Of this also there is the fullest evidence.

After waiting till the end of August, when the state of the country was beyond conjecture, the Lord Mayor of London, in the letter which he wrote to three great Ministers*, told them the stock of grain on hand was

* D. of G. E. of C. and E. of S.

very

very small, that the harvest had failed, and was unproductive; and that there were then (already) come commissions for buying up corn here, unlimited in price, and to an immense extent; — that therefore it was indispensably necessary some measure should immediately be taken to stop the exportation, otherwise the kingdom would very soon be drained, and a want at home. This was material information indeed, and it was as authentic as material; for your — will reflect from whom it came. — Not only from the chief Magistrate of the metropolis, but that Magistrate himself the best informed that any one could be, from his private situation, being the greatest corn-factor in England, perhaps in Europe; a worthy and sensible gentleman, well known in both houses of Parliament, where he has often attended on occasions relating to corn, called upon as the ablest in the kingdom to give information in these matters. Such was the person who gave this information to government; and it was the more worthy of regard, and ought to be mentioned to his honour, that his duty as a citizen of the commonwealth, as well as a Magistrate, in the high office he then bore in the city of London, prevailed over his own private interest, as there was not another man in the kingdom so much interested in the profit to be had by the commissions from abroad. It were to be wished, though I am not enthusiastic enough to hope it, that such an example of *disinterested* patriotism and public virtue would *ascend*. But in late transactions, my Lord Mayor's vigilance in his office as a Magistrate, has not been more woefully contrasted by the Neglect of Ministers, than his noble contempt of gain in his private character as a man, by the *pensioned* avarice of his superiors; — An excellent foil to illustrate the splendor of his virtues!

——— What did this information produce? Just nothing; at least nothing for the relief of the country. My L— P— S— and the S— of S— went to statute-books before unopened, not *dog-eared*, and there made the *amazing astonishing* discovery, that the act of Parliament of last session gave no power to the King and Council

Council to prolong the prohibition. Their government rested: the kingdom was left to be *amazed* in their turn, and my Lord Mayor's letters added to the number of some public offices.

The consideration of some weighty and important affair thus forced upon Administration, was yet laid aside for some days; and your — will not forget, that at this time Parliament was *not* prorogued; though there had been no thought of calling it, as there should have been much sooner; and if it had been called when my Lord Mayor's letter came, which represented the indispensable necessity there was of taking some measures, and when the *wonderful* discovery was made that no powers were left with the King and Council, it might have been assembled by the 20th of September, on twenty days notice, which even the — on the W — k has condescended to agree would be *due notice*; or if six days more had been given, still it might have met to apply the legal constitutional relief as early as the time when the *dispensing power* was exerted under pretence of the recess of Parliament.

It would seem however, — — —, that after a week or ten days consideration, it was thought necessary to put some mark of respect upon my Lord Mayor's letter: And it has been said, that a Council was held about the 8th of September, when, by the Bear-key prices, wheat was *only* at forty-eight shillings and three-pence. But that Council ordered no embargo; neither was it judged reasonable or necessary to call Parliament. The council however *did* somewhat, rather I think to amuse and shew their ignorance than any thing else; though it is like the amusement in the fable of the frogs. Accordingly that wise and useful Proclamation against foretalling was brought forth, bearing date the 10th of September: And for quieting the minds of the poor starving people, and ministering present and effectual relief to their distress, it publishes this comfortable news, that *the prices of corn are already very much increased, and the same is likely to grow much dearer, to the great oppression of the poor.* The people cry for bread, and the

the Ministers gave them a Proclamation; nay left one should not be enough, they gave them two of the same date, and in the same Gazette; and the second much worse than the first. I cannot on this occasion drive from my mind these words of the Scripture, which say, "If a son shall ask bread of any of you that is a father, will he give him a stone? Or if he ask a fish, will he for a fish give him a serpent? Or if he shall ask an egg, will he offer him a scorpion" Perhaps two such Proclamations never were coupled together. The one proclaims a *growing* dearth, when the ports were by *law* open for the free exportation of every ounce of grain in the kingdom, with the highest temptation to export, by an unlimited demand from abroad, to prevent which no remedy could be *legally* applied but by authority of Parliament: and under these circumstances does the other Proclamation prorogue the Parliament to the 11th of November, *sixty-one days*.

—— If it had been the purpose or deliberation of Government to aggravate rather than to alleviate the distress of the country, and by driving to despair, to promote insurrection and fire, what more effectual method could have been pursued? I speak to facts; and it is well they are proved, for I should not expect to be believed without evidence. What were the consequences? The question may well be asked; but I shall not answer it, for fear I should seem to justify what I condemn and regret.

But I will tell your — what happened after these Proclamations. Wheat that was at forty-eight shillings and three-pence on the 8th of September, was at forty-nine shillings on the 15th and 22d: and there were risings, riots and tumults, in all corners of the kingdom, and troops marched from county to county, to quell insurrections by military force: Famine and the sword met: Murders have been, and executions must be: The laws trampled upon and transgress'd by the people: Acts of Parliament from a *careless necessity* broken, and suspended by power without right, Royal authority, that

that is, unfounded prerogative, (for royal authority and prerogative are synonymous convertible terms): Royal authority, I say, exerted against law. For *at last*, when no *legal* remedy was left for an insupportable evil, the embargo by order of Council, that *violent*, but *then* necessary, and also inadequate remedy, was issued the 26th of September. It was *forced* by the cries and risings of the people, and by petitions from the great cities, and particularly the petition presented to the King on the 23d, from the Lord Mayor and Court of Aldermen of London, who could no longer remain silent spectators of the distress and danger, which near a month before had been represented in such strong terms to the Ministry, by their worthy and vigilant chief Magistrate, in a more private capacity and form.

— As to what has been said in the debate, that the facts laid before the Council on the 10th of September, which issued the Proclamations against forestalling, and for proroguing the Parliament, were not sufficient foundation for their proceeding to an embargo;— that it was then only a *surmise* of scarcity; and that the circumstances were so much changed before the 26th, when the embargo was ordered, that it could not be longer delayed; I own I cannot understand what it means: for we see by the Bear-key returns, that (as already mentioned) wheat was at forty-eight shillings and three-pence on the 8th of September, *that is*, above the bounty price; and it was but nine-pence higher, viz. forty-nine, on the 22d of September. But the order for an embargo is really the Ministry's indictment drawn by themselves: for it sets forth as its ground the very information that the Lord Mayor of London had given the Ministry twenty-six days before: And upon those *grounds of urgent necessity now impending*, that is, that they had been certified of as impending a month before, and *for the safety benefit, and sustenance* of his majesty's subjects, his majesty *then only*, by the advice of his Privy-Council, orders an embargo on wheat and wheat flour, and *nothing else*. And the necessity of laying it on by the *Royal Authority* is stated in these expressive words: “ And whereas the
“ Parliament *standing prorogued* to the 11th of Novem-
I “ ber

"ber next, his majesty has not *an opportunity* of taking
 "the advice of his Parliament *speedily enough* upon the
 "present emergency to stop the progress of a mischief
 "daily encreasing, and which, if not immediately pro-
 "vided against, might be productive of *calamities past*
 "all possibility of remedy:" A very just account of the
 situation of things that had been the *present emergency* for
 the two preceding months, and of the necessity of the
speedy remedy that had been so unaccountably *delayed* to
 be applied in any way during that time, and that a vo-
 luntary act of Administration, in the prorogation of Par-
 liament, when the emergency was come to the worst,
 had rendered impracticable in the legal and proper way.
 But the most curious part of the whole is, that the *want*
 of an opportunity of advising *speedily enough* with Parlia-
 ment, is spoken of as a common or unavoidable and
 unforeseen casualty, though the Ministry themselves
 were the cause that his Majesty could not *then* have, and
 had not even sooner had that opportunity.

But — —, if the Proclamation for the embargo is
 considered as a *remedy*, even this act of Power now jus-
 tified as *prerogative*, was itself but the crowning blun-
 der, by confining the embargo to wheat and wheat flour.
 The wisdom of Parliament extended their prohibition,
 under less pressing circumstances, and lower prices, to
 all grain, and every thing of corn kind, bread, biscuit,
 and starch. And one would have thought, that when
 the Crown was advised to suspend acts of Parliament
 for the public good, the *dispensing* power might also for
 the greater good of the public, have paid that compli-
 ment to the act of Parliament, to have followed it fully,
 and not in a part only, when the whole prohibition was
 far more necessary than at the time the law was made :
 not to say that the example of Parliament was at least a
 sort of shelter for a *prerogative-usurpation* upon its power.
 But even without resorting to the wisdom of Parliament
 for instruction, such an error as the omission of prohi-
 biting the exportation of all manner of grain in the Pro-
 clamations, could not have been fallen into, without
 either the greatest inattention, or most amazing unskil-
 fulness;

fulness; for hardly any body is so ignorant as not to know that a diminution of any one species of grain, not only raises the price of that particular species, but affects all the rest, because of the increase of consumption of these occasioned by the want of the other. And so the exportation of barley, which was not restrained by the embargo, has contributed to keep up the price of wheat, besides enhancing that of malt to an intolerable degree.*

— — If Parliament had been called in time, there might have been a more early, and there certainly would have been a more adequate and satisfactory remedy applied to the evil: and the very prospect of the meeting of Parliament would have kept the people quiet, as they will always have more confidence in Parliament than in any Administration, and will patiently wait for the relief for which they naturally look up to the Legislature. But in a Ministry that from the beginning had paid no attention to the calamity either in its presages or effects, and that cut off all hopes of Parliamentary relief by a prorogation, when they proclaimed the evil to be come to a great height, and still growing; in such a Ministry the people could take no confidence, nor could they indeed be expected to continue quiet under such circumstances. From Ministers capable of blundering so grossly in so plain and necessary a business as the care of provision for bread to the kingdom, what may not be expected of the blundering kind, in other matters of more difficulty, for of more importance there can hardly be any? With steersmen at the rudder so inexperienced in our own ports, the ship is not to be trusted in the wide sea.

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* The Parliament lost no time in remedying, as fast as they could, the blunders of administration. They revived the *Prohibition act* in its full extent; renewed the two other acts before mentioned, which expired on the 20th of September; and have taken other wise and necessary precautions. But that these might be no public act with regard to this great concern, the prevention of famine, executed by administration, without some egregious blunder, and some glaring proof of ignorance and inattention, the Privy Council, though they had a power to prohibit distillation till twenty days after the meeting of Parliament, prohibited it only for three. In consequence of which, all the distillery might go on till the act passed to stop it.

— Some pretences have been made, I cannot call them excuses, for not calling the Parliament, which has been the *origo mali*. One — — — speaks in a contemptuous stile; he says all the difference is, that the King has been advised by his *Little* instead of his *Great* Council.

— This way of speaking is unconstitutional, and ridiculous. I hope Parliament will always maintain its own super-eminent distinction, and mark it so as it shall not be the by-word of any Minister, by shewing on this, and every other occasion, that the King's Privy Council, which the — — — calls the *Little* Council, is indeed little in comparison of the Great Council of the *Nation*, as well as of the *Crown*; and that this Little Council, or any *one Man*, who dictates to them, never shall be entrusted with the power of *suspending* or *dispensing* with the standing law of the land, on any pretence whatever. If that were allowed of, there is no law so fundamental but might be subverted; nor any government more absolute than that which might be introduced.

The — — — says, “ he does not enquire whether my Lord Mayor's letter was wrote a day sooner or a day later.—There is a *littleness*, says he, in minding dates of Proclamations, — the day of laying the embargo, of proroguing the Parliament, and the day fixed for its meeting.—These are *minutiae*, beneath notice: Saving a country from ruin is a great object.—He goes to the great object of preventing famine.

— Saving a country from famine is a great object; but it may depend on nothing so much as *minutiae*, such as the — — — would overlook. It did depend upon such *minutiae* as dates in this instance; and the oversight promoted the famine, which attention might have prevented, sooner, and to much better effect.—But surely no instance can ever be more unfortunate, of contemptible *minutiae*, than that of the minding of days and dates, when the safety of a country is concerned. States have perished by the neglect of an hour, and moments have decided the fate of empires. The Prorogation of Parliament, in such a season of calamity and danger,

was no *minute* blunder. Last year that ——— said *he could not commend* the then Administration for calling Parliament *early*, as they termed it, because he thought *their* speed was delay, in such a conjuncture as that was; though the ground of his complaint of delay was *not* that America had been suffered to continue in rebellion for months, *but* that so much time had been lost in giving these poor oppressed subjects relief from the grievances, which he thought justified their mutiny. Now when *one* greater and wiser than all other men is Minister, days and dates are *minutiæ*. It is *his* Prerogative to blunder and be blameless.

But, says the ———, Parliament could not have been *conveniently* assembled sooner.—It may do for great ——— who live at their fine palaces in the neighbourhood of the capital, to come up here at any time;—and to be sure any man may get upon *the back of a post-horse*, and ride as fast as he can;—but it will not suit all the members of the two houses, that are to be brought from the East and the West, from the South and the North of this large kingdom, to call them from their houses and their domestic affairs, at an inconvenient season, and upon short notice. ——— This cannot be done without *notable inconvenience*.—And nothing is so dangerous as surreptitious meetings of Parliament.—The great security of our Liberties consists in calling Parliament upon full notice, to prevent all surprize.—And by surreptitious Conventions, *all countries that have been enslaved, have lost their liberties*, of which confident assertion, he however neither did nor can give one instance from any history.

Must we then, ———, for fear of a surreptitious surrender of our Liberties by Parliament, trust the Privy Council with a power that would subvert our liberties, and render our property precarious? But can the *lowest* number of Lords and Commoners that can make a Parliament, be less safe than the *Little* Council? The law of the land has taught me that Parliament assembled without any notice at all, is a better security for our Liberties than any Privy Council; and therefore, upon the

the critical emergency of a demise of the Crown, Parliament is by statute appointed to assemble *immediately*, however it may happen to stand prorogued at the time. So jealous is the constitution of a pretence left to the successor to the throne to govern with his Privy Council, without Parliament. But ———, it is very extraordinary to bear the danger of a surreptitious assembling of Parliament, used as an argument against haste in a season of imminent danger, by those who argue for *necessity* as sufficient to *suspend* and *dispense* with laws and acts of Parliament? Is there more safety in making *necessity* a law-maker, or a *lex temporis*, than in making it only a hasty conveener of the true legislature of the kingdom? ——— Ministers may not be fond of the meeting of Parliament, even when they do not fear much harm from it to their power; because, though it does not immediately or certainly destroy, it puts them in mind, in the midst of their arrogance, that they are mortal, like the Slave in the Triumphal Car. For my part, I have no fear of Parliament, called any how: but I have great fear of a power in the Privy Council that would supersede Parliament. It was the Rump of a well-weeded Parliament that abolished the monarchy, but no proclamation can garble either a House of Lords or Commons: and before any number assembled surreptitiously could sit long enough to attempt a surrender of our liberties, the most distant member, who did not chuse to be a slave, would find his way to Westminster, if *the back of a post-horse* could carry him; and the traitors would very soon find that they had only forfeited their own heads, to confirm the Liberty of their incensed country. In the present case, however, there was no occasion for a hasty convocation of Parliament. Government needed not to have been run to the *minutiae* of hours or days. Had Parliament been called, even when it was culpably prorogued, it might have had a longer notice than many sessions have sat upon. Nor can I see any *notable inconveniency* in calling it so soon, unless that the ——— could not have staid so long at the Waters; as I presume it could not have safely met without his —
 presence

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 prefence to *guide* it. As to forty days notice being necessary for calling Parliament, it is an assertion without all foundation, contradicted by usage, and by the very stile of the usual Proclamations which speak only of *due* and *convenient* notice; to effect which there is no charm either in the number forty, thirty, or any other. I was surprized to hear the — and — — say, he held it to be the *law of Parliament*, that forty days was necessary. There is no such *mos Parliamentarius*. And the — — must have forgot himself: for in the very first year of this reign, Parliament was called and sat for dispatch of business on twelve days notice by proclamation. The — — knows *who* then advised his majesty, and was in the *first* office in the kingdom. But if it were necessary to go into them, numberless instances since the Union are ready to be pointed out, of Parliament being called and sitting on twelve, sixteen, twenty days, and other indifferent numbers: and the — and — — is unsupported in this opinion, which is, indeed, totally a mistake; the other — and — — on the — — k having agreed that twenty days is due notice. There remains therefore no cloak nor excuse for the blunder of proroguing Parliament for *sixty-one* instead even of *forty* days, at a time when it was so necessary to have assembled it upon the shortest notice for which there was any precedent; and when, if it had been called even upon twenty days from the date of the Proclamation proroguing it, it would have prevented the necessity for an embargo by the Crown against law, and hindered those dangerous tumults and insurrections that at last extorted an act of such dangerous example from Administration.

— — The occasion is my apology for having said so much; yet it is but a small part of what might have been said on the subject, upon which I have taken the liberty to trouble you.

— — I am not afraid of the just *prerogative* of the crown. It is a part of the constitution, and it is salutary. “ The people’s liberties strengthen the King’s prerogative, and the King’s prerogative defends the people’s
 “ li-

“ liberties.” So said that unfortunate Prince Charles the First. But he said it falsely and deceitfully, applying it to his own depraved principles of government, in which he was nursed up to his ruin, by a father who never sat in *that chair*, but he taught like a Royal Professor the doctrines of arbitrary power to your — ancestors, who were but unapt scholars. What the self-deluded, and self-destroyed King said deceitfully, I think sincerely, in the just sense.

Neither, —, do I fear the *power* of the Crown, in the hands of the gracious Prince now reigning. He made it his early declaration from the throne, that our Liberty was as dear to him as his own Prerogative: And I trust a long line of illustrious descendants sprung from him, will inherit his zeal for the liberties of this country, the LAWS of which transferred the imperial diadem of these realms from those who were not worthy of it, to his Majesty’s august house. The freedom of the subject is the brightest jewel in the crown. It is the super-eminent prerogative of the Kings of England, by which they excel in glory all the Sovereigns on earth, that they rule over FREEMEN, not over *slaves*. The Brunswick line esteems it so. They have shewn it.

But, — — I dread principles, the scars of which this nation yet bears: — Principles destructive to the people, dangerous to the Prince: — Principles that lie at the root of all the illegal prerogatives usurped, and all the arbitrary power exercised by a Charles or a James.—These principles I will resist, adopt or countenance them who will. I will resist them not more from regard to Liberty, than from love to my Sovereign and his family. They are poisonous principles, and they are infectious. If it were possible to deceive even the *elect* family,—to impose upon a Prince of that house *chosen* to maintain our Liberties; it could only be done by principles found in the mouths of the professed friends of Liberty, who have got access to the Royal ear by such professions. The safety of the crown, as well as the security of the subject, requires us to shut up every avenue that could lead to tyranny: And he
who

who would unbar those gates which exclude it, is not, in his heart, far from the lust of it. I will suspect no man without a cause. But I will trust no man with what the constitution has not made a trust;—with any power that *must* do a general mischief; tho' in a particular emergency, it *might* have a *chance* of doing some good. Such a power I will not trust in the Crown; no, not for a case of *necessity*. — For as Lord Falkland, while he remained the advocate for Liberty, and before he listed in the service of King Charles's despotism, said, speaking of the ship-money judges, and their criminal opinion, "When that *necessity* which they would have so absolute and certain, takes place, the law of the land ceases; and that of general reason and equity, by which particular laws at first were framed, returns to the King's throne and government, where *Salus Populi* becomes not only *Suprema* but *Sola Lex*; at which, and to which end, whosoever should dispense with the King, dispenses with us, to make use of his and one another's."

— Men are but men. Unwise and unsafe trusts, are the surest inlet of treacherous, and infamous breaches of trust. The History of England shews how quickly, and shamefully, heroes for liberty have become tools of despotism. But, to use words I *have heard* from a certain *noble Lord*, when such expressions served his turn, —If we see an *arbitrary and tyrannical disposition somewhere*, the call for watchfulness is loud. Danger knocks at the gate. A *tyrannical* subject wants but a tyrannical-disposed master, to be a minister of arbitrary power. If such a Minister finds not such a master, he will be the tyrant of his Prince, as much as of his fellow-servants and fellow-subjects. I should be sorry to see my Sovereign in chains, even if he were content to wear them; —to see him unfortunately in chains, from which perhaps he could with difficulty free himself, till the person who imposed them runs away; which every good subject would, in that case, heartily wish might happen, the

sooner the better for all. We are a FREE PEOPLE ;
I am for a FREE KING.

N. B. Parliament has lately passed an act to permit the importation of foreign barley, barley flour, and pulse, to remedy, if possible, the mischiefs which have arisen from the embargo on wheat and wheat flour only; so that the Public are now to buy, at an enormous price, the very grain which had been exported out of the kingdom, and which administration would not prevent, although the necessity was both obvious and pressing.—Does not this Act carry with it the strongest, the most solemn, and final condemnation of the ignorance and blunders of the Administration in that Embargo?

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